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The “Living Human Treasures”
System in the Republic of Korea

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My love and gratitude go to my family, friends, and especially to my paternal grandmother, who has heartedly desired to see me completing this academic and educational experience. I hope, in the vastness of her life, this could represent one of her most precious souvenir.

In order to give to this work a sense of introspection from my personal experience, I would also like to record here an old memory of mine, which strongly contributed to my fascination and interest for traditional know-hows. When I was a child, an elderly lady from my small village helped me recover from a persistent St. Anthony's fire.¹ She was and still is considered one of the best faith healer by the local community. I still clearly remember the mysterious atmosphere, which surrounded her gestures and whispering in her small house, in the shadow of the church. For me, even after many years have passed, this has always remained an unquestioned miracle, and this elderly lady's hands and faith are to me the symbols of what can be considered to be the closest thing to the truth and goodness of life.

Lastly, I would like to remember the tiresome work done by Delphine Dall'Agata, my English language proofreader.

¹ Also known as Erysipelas.

Introduction

Objectives

The aim of this dissertation is to describe and investigate the Korean system for the safeguarding of Intangible Cultural Heritage (ICH), with a particular focus on the identification and preservation of national living human treasures (LHT). The “living national treasures” is a title initiated by the Japanese government at the national level, and then proposed by the Republic of Korea at the international one. This study takes into consideration the international instruments and documents as a general framework on which the Korean national legislation is partially based, the latter composed of the 1962 Cultural Heritage Protection Act (CPPL), modelled on the Japanese Cultural Property Law (enacted in 1950), and by the last legal instrument approved by the Korean government on the Safeguarding and Promotion of Intangible Cultural Heritage, approved in 2015 and entered into force in 2016. Great importance has been put on the description of the laws texts, which are thoroughly explained and reported, in order to also give some comparisons within the national system as concerns the enactment of these two legislations, as well as to provide some useful juxtapositions with the UNESCO 2003 Convention on the Safeguarding of Intangible Cultural Heritage.

The main reasons that have led me to examine the Korean system instead of others, as for example the Japanese one, which is often considered the keystone of the preservation of intangible cultural properties and its living national treasures, are the following:

- in 1993 the Republic of Korea sent a letter proposal to UNESCO in order to establish the Living Human Treasures system, in this way it has internationally contributed to the process of awareness raise on the need to safeguard intangible cultural properties and, in particular, their practitioners;
- at the beginning, Japanese law didn't nominate practitioners of folk traditions, who weren't recognised as living national treasures. A higher regard was given to elite cultural expressions, for this reason, folk ones didn't have the possibility to nominate an official bearer, until 2004. On the contrary, since the beginning of the establishment of a national law, Korea had included folk traditions among the ICH categories of its legislation, with no distinction between folk arts and other high-end cultural expressions, which both could have designated living human treasures. This has made the Korean legislation closer to the 2003 UNESCO Convention, as it considers, since the beginning, a wider range of Intangible Cultural Properties also included in the international instrument; but,

more importantly, the Korean system isn't hierarchical, thus, considers any cultural expressions at the same level;

- the recent entry into force of the 2015 Act demonstrates the flexibility and the processual nature of the Korean legislation, if compared to the fossilized one enacted by the Japanese government. Its many enactments also testify its ever-shaping character, which also reflects the international process in the drafting of the 2003 Convention, that lasted for decades, as clearly outlined in chapter 2;
- lastly, a strong personal attachment to this country's cultural richness and beauty has greatly contributed to my interest. Thanks to the opening, few years ago, of the King Sejong Institute in Venice,² I kept on studying Korean language and culture and participated in the beautiful exhibitions/fashion show of traditional Korean *hanbok*,³ hand-made by stylist Deok-Sun Seo, an event organised by Professor Vincenza D'Urso. This helped me in cultivating my lasting fascination in Eastern countries, with particular regard to the Korean one.

Through this analytical investigation, I would like to provide the foundations for future researches on this same topic and an example on how an already existing national legislation can be positively influenced by international instruments and evolve into more comprehensive enactments. Furthermore, the Korean granting system for bearers of intangible cultural heritage has proved to be successful in order to preserve the intergenerational transmission, however this couldn't be happening without a more systematic planning of collateral activities. For this reason, the text aims at highlighting the cross-cutting relations between the legislation and other sectors, such as education and private organisations administrative efforts.

Missing Topics

In outlining the main information regarding the Korean legislation, some topics have been voluntarily omitted. For instance, the intellectual property rights (IPRs) issue, which I briefly mention in the conclusion. The 2015 Act only states few provisions for the safeguarding of practitioners' know-hows and intellectual properties, and delegates to future Presidential Decrees to come. In fact, in the last few

² The Institute was closed in December 2017.

³ Name for South Korean traditional female dress, which is mainly composed of a jacket, called *jeogori*, and a long gown (*ch'ima*). It can be made of different cloths, which adapt to different life occasions. The most colorful ones are made of silk, usually dyed with bright colours. Nowadays, this traditional dress is used only during holidays or special events. However, in the past it represented the main daily garment.

years, great importance has been put on the question of rights protection at the national level. After all, the same UNESCO Convention doesn't contemplate any provision on the protection of intellectual rights, as Janet Blake had also recommended in her "Preliminary Study into the Advisability of Developing a new standard setting instrument for the safeguarding of cultural heritage," which stresses some contradictions in the application of this type of protection for ICH and their communities. Indeed, during the drafting process, WIPO was entrusted with the preparation of an IPRs related international document, in order to safeguard ICH know-hows and indigenous knowledge, which is still undergoing the drafting process.

Another interesting topic is the cultural exchange in the field of intangible cultural heritage between the Republic of South Korea and The Democratic People's Republic of Korea (DPRK), which unfortunately is missing. The omission was due to the difficulty related with this theme, there has been no sufficient time in order to thoroughly investigate this really sensitive topic.

Chapter outline

The text is divided into four chapters, which present the topic starting from a more general framework to reach the main theme of the thesis, with the final chapter, which focuses on two case studies from the Republic of Korea.

Chapter 1 and 2 investigate the general framework with the outline of the main sources, on which the study is based. As for sources, I here refer to juridical instruments coming from international organisations, as well as from national legislations. Chapter one introduces International Universal and Regional sources, which focus on the main topic of the thesis, thus, intangible cultural heritage, folklore, cultural traditions and their bearers. Hard and soft law instruments have been taken into consideration and most of the international instruments are those proposed by United Nations and UNESCO. On the other hand, regional instruments include various documents regarding the two areas: Asia and Europe. These two macro-regions were chosen because of the reference to the Korean and Japanese systems and the French one, which are analysed in the following chapters. The Korean legislation is at the heart of the dissertation, while, the Japanese and French ones were chosen in order to provide an effective comparison. The Japanese system is a useful juxtaposition inside the same Asia continent, whereas, France gives the idea of the actions taken by a Western country in order to safeguard ICH and its holders, in this way it provides a good contrast between these three different cultures.

The key definitions, the general framework and the historical background are established in the second chapter. They are here used as points of reference for the understanding of the processual nature of

the main instruments, documents and legislations which safeguard and preserve intangible cultural heritage and its practitioners, nowadays. The chapter is divided into two sections, the first one delves into the intangible cultural heritage, the second one focuses on the living human treasures. The structure used for both these sections is the same, definitions of these two terms are first provided, and then the historical and general framework are drawn through the analysis of the main international, and national documents, that marked the process of awareness raise at the international level, and sometimes at the national one, of the importance of safeguarding and preserve the transmission of traditional cultural expressions.

The core subject matter of the thesis is investigated in the third chapter, where the Republic of Korea's legislation and living national treasures system are analysed. The first section drafts the context which influenced the development of this safeguarding system in the country, by investigating the historical facts, the rise of Korean nationalism, and the interest in folklore scholarship. These three points are strongly interwoven and provide a clear prospect of the reasons why in Korea the national preservation of intangible cultural heritage expressions was felt before than in other countries. Section 2 described the two major legislations, which protect ICH and LHT at the national level, respectively: the Cultural Property Protection Act, entered into force in 1962, and the following and more recent Act on the Safeguarding and Promotion of the Intangible Cultural Heritage, approved in 2015 and enacted in 2016, which directly draws from the UNESCO 2003 Intangible Cultural Heritage Convention (ICHC). These two acts are described and compared, also taking into consideration the 2003 UNESCO ICHC. The following section delves into more details through a comprehensive analysis of the identification of ICH and practitioners for the national and regional lists. Moreover, description of formal and non-formal ways of transmission of knowledge, which are active nowadays in the Republic of Korea, are provided. Furthermore, the national and regional subsidies guaranteed to successors of nominated ICH items, one of the distinctive trait of this system, are described in detail. Section 4 lists and describe the activities carried out by some of the most relevant organisations set in Korea, most of them recognised by UNESCO as accredited NGOs, and that collaborate with communities and practitioners. Finally, the last section introduces the comparisons with the Japanese and French systems, which have similar policies and that represent useful juxtaposition to see the positive and negative aspects of all these national systems.

Two significant case studies are investigated in the last chapter, where the application of the Korean legislation has been carried out. The intangible cultural properties described are: Shamanism, and the *Gangeung Dano* Festival. These two were chosen because of their importance at the national level, and for what concerns the latter also at the international level. They provide useful examples of how the living human treasures and the communities are involved both at the national and regional levels and through mutual cooperation between the central and regional administrations, NGOs and residents. In

addition, the effects of the Korean subsidies system, which allows the practitioners to receive a monthly allowance, are stressed.

As an appendix to this dissertation, there are documents related to the Korean legislations, with some selected articles from both the Cultural Properties Protection Act (1962), which focus on intangible cultural heritage and holders, as well as the the fourth chapter from the Act on the Safeguarding and promotion of Intangible Cultural Heritage (2015), that delineates the rules for the recognition of holders. Two tables give also notice of the actual subsidies and monthly allowances provided to national and city/region/province recognized living human treasures.

Chapter 1

Sources

The main legislative sources for this research are divided into three sections: Universal International and Regional Instruments, and National Legislations. The first section presents International Legislative Measures in the field of Intangible Cultural Heritage, Living Human Treasures, and Cultural Diversity. The majority of the documents are UNESCO conventions, recommendations, and declarations, as can be seen both hard and soft law instruments are taken into account. At the regional level the macro-areas: the Americas, Africa, Arab States, East Asia and Europe are acknowledged, however only Europe and East Asia are examined in depth. At the local level the focus is on national regulations developed by the Republic of Korea (ROK), in addition Japan and France's regulations are analysed in order to provide some equitable juxtapositions in the field of Living Human Treasures protection and promotion.

1. International Universal Instruments

In this section, UNESCO, WIPO, UN, and other international organization instruments are taken into consideration, and here divided into hard and soft law sub-paragraphs. International soft law instruments (declarations, recommendations, etc.) dominate. A possible explanation for this might be the poor initial interest of Western countries⁴ in the safeguarding of immaterial heritage; secondly, the relatively recent international awareness on this topic; and finally, intangible heritage's cross-cutting nature, which is difficult and varied in its very definition and whose legislative and normative approaches cannot be easily standardised.

A. HARD LAW

The safeguarding of intangible cultural heritage is a relatively new quest. The 2003 Intangible Cultural Heritage Convention (ICHC) tries to remedy the deficiencies in the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage (World Heritage Convention), and in the Recommendation on the Safeguarding of Traditional Culture and Folklore⁵ (1989, UNESCO). The above-

⁴ As it concerns the UNESCO 2003 Convention, during the 31st General Conference in October 2001 it was discussed if a normative instrument safeguarding intangible cultural heritage should have been similar to the 1972 one. Grenada, Australia and the Netherlands, together with some Western Europe countries, opposed to the idea of a convention, however the General Conference voted for a convention-type normative instrument thanks to the presence of Asian, African and Latin American countries. VV. AA., *Le patrimoine culturel immatériel à la lumière de l'extrême-orient* (Arles: Acted Sud, 2009), 22-23.

⁵ The Recommendation is here considered as an Instrument of Soft Law and thus analysed both in subsection B of this chapter's section, then analysed in depth in Chapter 2.

mentioned UNESCO Conventions together with the UN Convention on Biological Diversity (1992) constitute the fundamental normative on which the ICHC was modelled. For the 2003 Instrument the typology of an international convention, such as the 1972 one, was selected between the different proposals suggested during the discussions amongst Member States and experts.⁶

On October 20, 2005, the Convention on the Protection of Cultural Diversity was adopted and it confirmed the incessant work for further development of the 2001 Universal Declaration on Cultural Diversity and the 2003 ICHC.

The connection between these instruments is evident; albeit the 1972 and the 1992 Conventions do not strictly relate to ICH, and the 2005 one is complementary to it, they can be considered a set of instruments necessary for the safeguarding of intangible cultural heritage⁷ and its bearers.

The 1972 Convention, consisting of 193 Member States,⁸ answered the urgent need to protect immovable cultural heritage⁹ as Articles 1 and 2 state, which include both cultural and natural heritage.¹⁰ It does not consider intangible heritage in the forms of traditional cultures and folklore. There is only a reference to sites of ethnological and anthropological importance,¹¹ nevertheless the attention is always set on a tangible aspect of man's craftsmanship.

⁶ Before the Convention model was selected, several suggestions were made contributing to the discussion on what kind of document should safeguard all folklore expressions and traditional culture at the international level. Here I report some of the recommendations made:

- add an additional protocol to the 1972 Convention (Noriko Aikawa, "An historical overview of the preparation of the UNESCO International Convention for the Safeguarding of the Intangible Heritage," *Museum International* 56, n. 1-2 (2004): 142;
- suggest a mechanism combining the World Heritage List and the UNESCO Prize System at the 1997 Marrakech Meeting by the Canadian lawyer Marc Denhez (Noriko Aikawa-Faure, "From the Proclamation of Masterpieces to the Convention for the Safeguarding of Intangible Cultural Heritage," in Laurajne, Smith, and Natsuko Akagawa, *Intangible Heritage* (London, New York: Routledge, 2009);
- develop a new Recommendation which reflects recent advancements concerning this topic (Janet Blake, *Developing a New Standard-setting Instrument for the Safeguarding of Intangible Cultural Heritage* (Paris: UNESCO, 2002), 2);
- establish a new international convention, very similar to the 1972 one (Janet Blake, *Developing a New Standard-setting Instrument*, 2.).

⁷ See Irina Bokova "Opening Ceremony Speech" (Paris December 2009) video (in French): "Irina Bokova-Opening Cerminoy Speech," UNESCO, accessed June 19, 2018, <http://www.unesco.org/new/en/culture/themes/cultural-diversity/cultural-expressions/meetings/intergovernmental-committee/sessions/3igc/>.

⁸ Accessed: December 2017.

⁹ This urgent need emerged in 1959, when the Egyptian government decided to build the Aswan Dams and UNESCO launched the International Safeguarding Campaign in order to save Nubia monuments and temples set in that area. This helped raise awareness about the importance of safeguarding World Cultural Heritage. (for further information see: "Abu Simbel: The campaign that revolutionized the international approach to safeguarding heritage,"

UNESCO, accessed June 19, 2018, https://en.unesco.org/70years/abu_simbel_safeguarding_heritage?language=en; <http://whc.unesco.org/en/activities/173/>; and Lauso Zagato, *Lezioni di diritto internazionale ed europeo del patrimonio culturale* (Venezia: Cafoscarina, 2011).

¹⁰ The convention categorises cultural properties in three domains: buildings, monuments and sites; together with natural heritage, also divided in three main categories: human landscape, areas which are important from a scientific and conservative point of view, associative and cultural landscapes.

¹¹ See UNESCO 1972 Convention concerning the Protection of the World Cultural and Natural Heritage, Art. 1.

This normative instrument is fundamental in order to explain the preparation of the 2003 ICHC, as it is part of the international normative instruments' background for this research topic. The principal considerations that have led to this statement are: 1) the 1972 Convention as source of inspiration for the new instrument;¹² 2) continuity between tangible and intangible heritage;¹³ 3) the 2003 ICHC is often misunderstood to be part of the World Heritage Convention¹⁴ due to their complementarity and similarities.

A comparison of the two Conventions stresses both analogies and differences. As far as the first ones are concerned, the creation of the lists in both systems and the presence of an urgent safeguarding list in the 2003 ICHC are comparable to the “list of the World Heritage in Danger”, the establishment of a fund should be taken into account. In order to provide assistance and continuity both instruments contemplate educational programmes as well as international cooperation and assistance.

Some differences between the two conventions have also been outlined. The most noticeable being in the definition of cultural heritage itself, with the elimination of the “outstanding universal value” connotation.¹⁵ The removal of this characteristic may be linked to the aim of creating a respectful dialogue between different cultures¹⁶ and could be seen as an important factor in response to the strong engagement of communities in the 2003 Convention,¹⁷ which were not contemplated in 1972.¹⁸ Another important dearth of features is the role of NGOs, which do not act as advisory bodies as in the ICHC, and the wider inclusiveness of the term of Authenticity,¹⁹ which could not be applied to intangible heritage²⁰ without revisions.

¹² UNESCO, *Report of the first session of the Intergovernmental meeting of experts on the preliminary draft Convention for the Safeguarding of the Intangible Cultural Heritage*, 23-27 September 2002, CLT-2002/CONF. 203/CLD.5.

¹³ The strong relationship between tangible and intangible heritages, which has been outlined by various documents and meetings, is connected to the concept of “cultural spaces.” Some cultural monuments or natural spaces are deeply interrelated to the point that they can both gain meaning through connection.

¹⁴ See Sophia Labadi, *UNESCO, Cultural Heritage and Outstanding Universal Value: Value-Based Analyses of the World Heritage and Intangible Cultural Heritage Conventions* (Lanham: Altamira - Rowman & Littlefield publishers, 2013), 128.

¹⁵ See Tullio Scovazzi, Lauso Zagato and Benedetta Ubetazzi, *Il patrimonio culturale intangibile nelle sue diverse dimensioni* (Milano: Giuffrè, 2012), 20-21.

¹⁶ UNESCO, 2003, *Convention for the Safeguarding of Intangible Cultural Heritage*, art. 1.

¹⁷ The introduction of the role of communities represents a turning point in the 2003 Convention. The role of communities (groups and individuals) in the production, safeguarding, maintenance, recreation, and management of such heritage should be promoted and encouraged (UNESCO, 2003 Convention, art.11b, Art.15).

¹⁸ Recognising this deficiency the fifth “C”, which stands for “Communities”, was added in 2005 to the four Strategic Objectives of the World Heritage Committee.

¹⁹ This characteristic was discussed again, and a wider meaning was given and examined during the Nara Meeting (Japan, 1994). Nevertheless, the new approach was not universally accepted, thus it still represents a topic of dispute. On this topic see: Sophia Labadi, *UNESCO, Cultural Heritage and Outstanding*, 127-128.

²⁰ Scovazzi, Lauso Zagato and Ubetazzi, *Il patrimonio culturale*, 21.

Since 1982 and onwards international meetings and conferences were organised,²¹ shifting the attention to a more ephemeral heritage. In October 2003,²² the Convention for Safeguarding Intangible Cultural Heritage was finally adopted and it was approved at the 32nd General UNESCO Conference with no votes against it. Nowadays, ICHC includes 175 Member States and should be considered the first binding international instrument to safeguard ICH. It was a great result, especially for non-Western countries, which strongly sustained this convention and intangible heritage recognition. Together with immaterial heritage the text highlighted the importance of cultural diversity and human creativity, which are fundamental to safeguarding the traditions of communities, groups and individuals.²³ This is precisely why the strong connection with the 2005 Convention on Cultural Diversity should be stressed.

The 2005 Instrument can be regarded as the last regulation to complete the international normative set. The work of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions lasted for 2 years,²⁴ being relatively fast if compared to the 2003 one. This convention is not solely inclusive of the 2003 ICHC, moreover it clearly reflects the 2001 UNESCO Universal Declaration on Cultural Diversity. Some deficiencies have been outlined such as the absence of a listing process and voluntary fund. In addition, a lack of cooperation between the 2003 and 2005 Conventions should be pinpointed. Despite these differences, both of them address communities and groups (in some cases individuals), especially indigenous people; and are relatively weak in terms of a binding force.

B. SOFT LAW

Soft Law Instruments regarding ICH and the Living Human Treasures System are numerous and come from various disciplines. UNESCO recommendations and declarations are taken for granted, as well as UN Declarations on the Rights of Indigenous Peoples. Other relevant documents, such as the Venice Charter (1964) and the Nara Document (1994), were developed by UNESCO in collaboration with other international organizations and provide a comprehensive overview of the subjects discussed during those years. Most of these instruments came before the 2003 ICHC, only a few of them chronologically follow the adoption of the convention. A holistic approach was adopted for this research topic; thus, some documents may not focus on intangible heritage, however they are fundamental in understanding the instrument drafting process and the historical and cultural background which led to the execution, in an

²¹ The Mexico City “Mondiact” (1982) conference was the first international venue where the topic of safeguarding folklore and traditional cultures was in the spotlight.

²² The convention entered into force on the April 20, 2006, with the deposit of the 30th ratified instrument.

²³ “Recognizing that communities, in particular indigenous communities, groups and, in some cases, individuals, play an important role in the production, safeguarding, maintenance and recreation of intangible cultural heritage, thus helping to enrich cultural diversity and human creativity” UNESCO, 2003 Convention.

²⁴ Negotiations were initiated with the adoption of Resolution 32C/34, at the 32nd session of the General Conference (October 2003). It now includes 145 Member States.

international context, of the 2003 Convention. Most of these documents deal with the general safeguarding of cultural traditions and folklore, as well as community involvement and protection, cultural diversity, and cultural landscapes. Intellectual rights are also discussed, since they are vital to the protection of intangible heritage and its bearers.

During the drafting period for the ICHC, attention was paid to the 1989 Recommendation on the Safeguarding of Traditional Culture and Folklore. As already mentioned above, the Recommendation does not require legal measures to be taken by State Parties; thus, transforming the 2003 Convention into a conquest for the protection of folklore and traditional cultures. The 1989 definition of immaterial heritage was narrower than the one used today, and it was criticised for the intentions and methods suggested, or better absent, as safeguarding measures. However, it must be brought to mind that the 1989 Recommendation is the first document of its kind and it helped raise international awareness on an unusual topic for that time.

Another noteworthy change was in 1992 when some implementations were applied to the WHC in order to include “cultural landscapes.”²⁵ However, a hint of this definition could be foreshadowed in the 1962 Recommendation Concerning the Safeguarding of the Beauty and Character of Landscapes and Sites (UNESCO).²⁶ The important connection between tangible and intangible heritage can be traced back to this Recommendation, where the importance of landscapes and sites is considered to have a “moral and spiritual regenerating influence.”

Other instruments focus on the protection of cultural diversity, cultural identity, and forerun the 2005 Convention on Cultural Diversity. For instance, the 1976 Recommendation on Participation by the People at Large in Cultural Life and their Contribution to It, and the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which focus on the protection of specific and minority cultural identities. Moreover, the 2001 UNESCO Universal Declaration on Cultural Diversity, as well as the 2007 UN Declaration on the Rights of Indigenous Peoples. The latter is considered

²⁵ For more information consult: Harriet Deacon, *The Subtle Power of Intangible Heritage: legal and financial instruments for safeguarding intangible heritage* (Cape Town: HSRC Press, 2004), 14.

²⁶ The Preamble of the UNESCO Recommendation Concerning the Safeguarding of Beauty and Character of Landscapes and Sites states: “Considering that, an account of their beauty and character, the safeguarding of landscapes and sites, as defined in this document, is necessary to the life of men for whom they represent a powerful physical, moral and spiritual regenerating influence, while at the same time contributing to the artistic and cultural life of people, as innumerable and universally known examples bear witness.”

to be the last tentative to protect minority groups and communities, even if it does not have the force of the law, though it “establish(es) moral high ground”²⁷ in the discipline.

Concerning Living Human Treasures, the most important international document is the proposal made by the government of Korea (South) in 1993 and its guidelines published in 2003. This proposal responded to the need for protection of the people involved with the creation of cultural traditions, which the 1989 Recommendation did not refer to and considered one of its main deficiencies.²⁸ In the light of the above proposal, discussions about the protection of endangered living cultural expressions led to the Proclamation of the Masterpieces of the Oral and Intangible Heritage of Humanity (from 2001 to 2005), afterwards incorporated into the 2003 ICHC.²⁹ The guidelines give specific indications on the selection and application of the system, while the Proclamation adopted in 1997 at the 29th session of the General Conference established a rewarding system for the bearers of traditions and cultural expressions. Another document related to this topic is the 1997 UNESCO Declaration of the Responsibilities of Present Generations Towards Future Generations. The latter document, which lays out fundamental responsibilities in the areas of Freedom of Choice,³⁰ and Cultural Diversity and Cultural Heritage,³¹ thus anticipating the 2003 and 2005 Conventions. Article 7 of the last-mentioned Declaration states: “The present generations have the responsibility to identify, protect and safeguard tangible and intangible cultural heritage and to transmit this common heritage to future generations,”³² setting a turning point by underlying the importance of transmission and recalling Letter E of the 1989 Recommendation on the Safeguarding of Traditional Culture and Folklore.³³

The Nara Document (1994) differs from all the above-mentioned documents. It was prepared during a conference hosted by the Japan government, and implemented by the Venice Charter under the auspices of ICOMOS and the World Heritage Committee. It modifies the concept of authenticity, established in 1964, by setting a more inclusive discussion on the term and definition to be applied. It raised some doubts on a fixed and standardised application of this term to cultural heritage,³⁴ and to a more

²⁷ Duane Champagne, “UNDRIP (United Nations Declaration on the Rights of Indigenous Peoples): Human, Civil, and Indigenous Rights,” *Wicazo Sa Review* 28, n.1 (Spring 2013): 9-22.

²⁸ Janet Blake, *Developing a New Standard-Setting*, 33.

²⁹ UNESCO, 2003 Convention, art. 31.

³⁰ UNESCO, Declaration on the Responsibilities of the Present Generations Towards Future Generations, adopted by the General Conference of UNESCO, at its 29th session, on 12 November 1997, in Paris, art. 2.

³¹ UNESCO, Declaration on the Responsibilities, art.7.

³² UNESCO, Declaration on the Responsibilities, art.7.

³³ Letter E of the 1989 UNESCO Recommendation is concerned with the “Dissemination of Folklore.”

³⁴ See the “Work on the Nara Document on Authenticity highlighted the need to move away from purely Western expert testimony in determining authenticity and to recognise the values that a cultural property represents in the eyes of the community concerned” Harriet Deacon, *The Subtle Power of Intangible Heritage*, 16; and Nara Document, art.11.

complex value system represented by communities. However, the most noteworthy change is the definition of heritage as stated in Art. 7,³⁵ which includes both tangible and intangible heritage, in contrast with the monumental bias of the Venice one. In honor of the 10th anniversary of the Nara Document, the Yamato Declaration was adopted in 2004. Whereby, the importance of mutual cooperation between tangible and intangible is underlined, and the discussion on the meaning of authenticity is re-examined in the light of the conference held a decade ago.

The 2015 UNESCO Recommendation concerning the Protection and Promotion of Museums and Collections, their Diversity and their Role in Society sets a turning point by declaring the importance of museum institutions in safeguarding, promoting and transmitting ICH. Communication between museum stakeholders, both from the inside and outside, should be strengthened, in order to enhance social cohesion and support education. They are “vital public spaces,”³⁶ which could be mediums of social cohesion and mutual understanding.

2. International Regional Instruments

East Asia and Europe instruments, projects and documents are introduced. Regional Instruments are considered important in building a more inclusive and international awareness about the need to protect folklore and cultural traditions, as well as cultural diversity, which has been and is still today often put in danger. Through the understanding and comprehension of Member States’ regional communities, social cohesion between populations can be built. For this reason, cooperation is one of the main UNESCO objectives for the 2003 and 2005 Conventions. Here it is necessary to show the main East Asia normative instruments, as the core of the research dealing with ROK. Moreover, it was considered appropriate to give a biased comparison by showing the European regulations and projects concerning the topic.

A. EAST ASIA

Declarations, recommendations, agreements and other non-binding documents are analysed in order to outline the East Asia regional legal mechanisms for the protection and promotion of intangible cultural heritage and its bearers. The East Asia countries considered here are: the ASEAN³⁷ participating

³⁵ “All cultures and societies are rooted in the particular forms and means of tangible and intangible expression which constitute their heritage, and these should be respected” from the Nara Document, art.7.

³⁶ UNESCO, 2015, *Recommendation concerning the protection and promotion of Museums and Collections, their diversity and their role in society adopted by the General Conference at its 38th Session*, point 17.

³⁷ Acronym for: Association of Southeast Asian Nations.

countries (Brunei Darussalam, Cambodia, Indonesia, Laos PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam), those included by the ICHCAP³⁸ (48 Member States of the Asia-Pacific region), and those engaged by the ACCU.³⁹

The ASEAN Association was established in 1967 and has now reached a total of ten countries from the South-East Asia region which deals with relevant international issues. Concerning the topic here analysed, the 2000 (July) ASEAN Declaration on Cultural Heritage is a key instrument that focuses on cultural heritage in general, and in addition, it establishes regional suggestions for the promotion and protection of intangible cultural heritage. It was adopted before the 2003 UNESCO ICHC and after the 1989 Recommendation, and it clearly represents a step towards the amelioration in safeguarding other kinds of cultural heritages. Its scope is vast and approaches may vary, however state parties should always consider vitality as one of the main characteristics to be promoted and preserved. National and local interests not only recognize cultural diversity to be safeguarded as a treasure for nations, but also contribute to the further development of mutual understanding in Southeast Asia through ASEAN relationships, starting from the reciprocal knowledge of differences and similarities. Under the definition of culture and cultural heritage, intangible cultural heritage is divided into two distinct clusters: “oral or folk heritage” and “popular cultural heritage,” which are in turn composed of different cultural expressions.⁴⁰ Chapter 3 suggests to “sustain and preserve worthy living traditions and folkways and protect their living bearers” through cooperation, it recalls Letter D in the 1989 Recommendation, and goes beyond by suggesting an award system to encourage and sustain transmitters of worthy living traditions, thus getting closer to more recent instruments such as: The Living Human Treasures System (1993) and the 1997 Proclamation of the Masterpieces of Oral and Intangible Heritage (1997).

Another common point with the 1989 Recommendation is the Protection of Folklore under Intellectual Property Rights, both documents take into account the developments of international laws. The ASEAN Declaration addresses this issue in a more generic way, but also declares the communities of indigenous peoples and “traditional groups as the legitimate owners of their own cultural heritage.”⁴¹

Concerning the Vientiane Declaration of 2016, there is not any other substantial progress in the normative area of the ASEAN, but merely a reaffirmation of the 2000 commitments in the ICH field. Not only soft law documents prove a deep interest in safeguarding ICH and living traditions, but also the ASEAN 2016-2025 Strategic Plan for Culture and Arts shows the need to take into account living traditions,

³⁸ Acronym for: Intangible Cultural Heritage Centre for Asia-Pacific.

³⁹ Acronym for: Asia-Pacific Cultural Centre for UNESCO.

⁴⁰ *2000 ASEAN Declaration on Cultural Heritage*, published by the ASEAN Committee on Culture and Information ASEAN Secretariat, Jakarta, April 2002.

⁴¹ *2000 ASEAN Declaration on Cultural Heritage*.

local knowledge, systems and practices, as priority actions areas⁴² for all Southeast Asia countries. Moreover, it highlights the importance of outlining the close links between tangible and intangible heritage by introducing this perspective through education.⁴³

Even though ASEAN does not include the Republic of Korea, the country has established consistent relations with the association, enlarging the group of Asian countries involved in sharing ideas, legal mechanisms and cultural projects. For instance, the establishment of an ASEAN Culture House in Korea, the proclamation of 2017 as the ASEAN-ROK Cultural Exchange Year, and the co-organization of a Flute Festival, celebrating ASEAN traditions across cultures.⁴⁴

A useful contribution to the implementation of the 2003 Convention at the dawn of its application is represented by the 2006 UNESCO-ACCU meeting, which led to some useful recommendations and conclusions. The final document reports practical guidelines and suggestions regarding the drawing of inventories, preparation of nominations for the representative list, and development of interregional cooperation and mutual understanding. In addition, communities, groups and individuals' definitions are explained, which can be considered an important addition to the 2001 Turin International Round Table on "Intangible Cultural Heritage - Working Definitions" drafted by Peter Seitel, where these terms are missing. From another perspective, ICOM Asia-Pacific (represented by the ICOM Presidents from China and Asia Pacific) had already demonstrated its interest in the safeguarding of ICH at the international level through the Shanghai Charter,⁴⁵ drafted after the Shanghai ICOM workshop in 2002. The workshop focused on museum management and intangible cultural heritage integration with a list of safeguarding measures and methods to be considered among experts.

B. EUROPE

This section explores "European" initiatives, thus European Union (EU), as well as the Council of Europe (CoE) instruments. In light of all European Union countries acceptance to both the 2003 and 2005

⁴² ASEAN Strategic Plan for Culture and Arts 2016-2025, Section: 4.3.7.

⁴³ ASEAN Strategic Plan for Culture and Arts 2016-2025, Section: 4.5.4.

⁴⁴ See *Chairman's Statement of the 19th ASEAN-Republic of Korea Summit*, 13 November 2017, Manila, Philippines, Point 17, p. 4. <http://asean.org/storage/2017/11/19th-ASEAN-ROK-Summit-Chairs-Statement-FINAL.pdf>.

⁴⁵ The charter text can be consulted at the following URL: "Workshop on Museums and Intangible Heritage - Asia Pacific Approaches," ICOM, Accessed June 19, 2018, http://archives.icom.museum/shanghai_charter.html.

UNESCO Conventions, except for the United Kingdom⁴⁶ which only ratified the one on Cultural Diversity, the EU and CoE developed several projects in order to stimulate interregional cultural dialogue.

Concerning the EU, the predominance of documents dealing with cultural diversity and identity is evident instead of intangible heritage. In the Treaty Establishing the European Community (2006), Title XII, the Art. 151 enunciates the full respect, promotion and flowering of cultural diversity of EU Member States. This same Article was then replaced by Art. 167, Title XIII, in the Treaty on the Functioning of the European Union (2016/C). The EU always tries to foster common cultural heritage in all EU countries, and in order to do so encourages cooperation not only between State Parties but also with the CoE, for this reason the second part of this section is devoted to the CoE's projects and documents. By keeping an eye on cultural diversity, the 2007 European Agenda for Culture in a Globalizing World summarizes the EU's view on cultural diversity and identity in 15 pages, and illustrates projects, relations, and common objectives, which range over several areas. Globalization is here intended as an opportunity for mutual respect of cultures and free movement of people, ideas, and knowledge, which can enrich the world's cooperation, communication and struggle against poverty and create a more inclusive society. The text does not explicitly refer to "intangible heritage," "folklore" or "cultural traditions," however the terms "cultural diversity" and the definition of "culture" regarded as: "distinctive spiritual and material traits that characterize a society and social group" and "ways of life, value systems, traditions and beliefs" reflect a more inclusive group of cultural expressions, including intangible heritage.

In the Policy Recommendations of the European Committee of the Regions: "Diversity and an Integrated Approach to Cultural Heritage" (2015), intangible heritage is explicitly regarded as a means of social cohesion, economic growth and improvement of high-quality tourism. ICH directly affects a region's or nation's cultural identity, thus becoming the main reason, a condition *sine qua non*, different cultural identities can exist.⁴⁷

Heritage legal protection studies have underlined several times the lack of intellectual property rights concerning cultural expressions, folklore, cultural traditions and protection of holders. Neither the EU or CoE have developed *ad hoc* instruments for this area. The research can only take note of the EU Charter of Fundamental Rights, which could stimulate a faster approach by the international community to the final development and draft of a wider IP legislation.⁴⁸

⁴⁶ Even though successful referenda on Brexit, this research includes the United Kingdom in the European countries, given that the exit process will take some time. Moreover, the European Union website explicitly states that the full membership of the United Kingdom still remains (accessed January 2018).

⁴⁷ This statement is shown in the Policy Recommendations of the European Committee of the Regions: "Diversity and an Integrated Approach to Cultural Heritage," 2015, at point 13 in the chapter entitled "Cultural Heritage and Diversity."

⁴⁸ The WIPO negotiation on the process for the drafting of an international legislation for IP rights, which addresses traditional cultural expressions, must also be mentioned.

Attention now turns to the Council of Europe's documents and projects. "Cultural Routes," "The Intercultural Cities" and "Heritage from Elsewhere, Heritage of Others" are three of the main projects which are taken in accordance with the 2005 Council of Europe Framework Convention on the Value of Cultural Heritage for Society (FARO). This document together with the CoE European Charter for Minority Languages have to be considered when analysing the ICH and Living Human Treasures inside the European normative framework. The FARO Convention deals with the protection of heritage in a more inclusive way. At the core of the framework there are intangible expressions and forms of heritage which are "constantly evolving", which can be considered synonymous with "living," and deeply-rooted in a place, as Article 2.a clearly states.⁴⁹ In addition, it emphasizes the role of communities as the main characters for the spreading and maintenance of local traditions, and as key drivers of social cohesion. Even though it is not enforced by law, it imposes upon parties the creation of a committee, which has the duty to control the efforts of Member States towards a national implementation of the framework.

The European Charter for Minority Languages was adopted in 1992, thus it can be defined as a pre-ICHC treaty. Minority languages are an important vehicle of cultural diversity and one of ICH's main mediums. The group of languages considered by the charter does not comprise dialects,⁵⁰ however this distinction cannot be applied to the UNESCO Convention.⁵¹ Despite the narrow application of this charter, it shows the European attention to one of the most significant signs of cultural diversity and identity, and points out a step forward in the safeguarding of regional and local traditions that can be manifested through language.

The 1998 Framework Convention on the Protection of National Minorities of the CoE partially includes some expressions of ICH in the broader framework of human rights, such as: the preservation and promotion of cultural expressions held by cultural minorities within a nation; and the safeguarding of minority languages and traditions. Even though it is not an obligatory text (39 ratified it), it has forced several countries to consider minorities in their national legislation, especially for those who entered in the CoE after 1998. Another useful instrument linked to the subject of cultural identity is the 2000 European Landscape Convention. By recognising the importance of landscape, it also stresses the fundamental role that this plays in the cultural identity of people and communities.⁵² This also recalls the 1992 supplement to the WHC of the "cultural landscape" definition.

⁴⁹ Article 2.a: "Cultural heritage is a group of resources inherited from the past which people identify, independently of ownership, as a reflection and expression of their constantly evolving values, beliefs, knowledge and traditions. It includes all aspects of the environment resulting from the interaction between people and places through time."

⁵⁰ European Charter for Minority Languages (1992), art. 1.2 states: "*it does not include either dialects of the official language(s) of the State or the languages of migrants.*"

⁵¹ It should be remembered that the UNESCO 2003 ICHC does not consider languages, dialects or any other form of communication as ICH categories. Languages, dialects etc. are taken into account only as mere mediums of oral cultural expressions as stated in art.2(a) of the Convention.

⁵² European Landscape Convention (2000), Art.5.

3. National Legislations

The national legislations considered for this section are the Republic of Korea (ROK), Japan, and France. The ROK legislation represents the core of the dissertation and will be thoroughly analysed in the following chapters. The Japanese normative instruments taken into consideration are those useful in comparing the two main East Asian systems. The French one represents the main Western country system, which will be useful to understand how the 2003 Convention and the Living Human Treasures System have been considered within other national law systems.

A. REPUBLIC OF KOREA

The Republic of Korea has been dealing with the ICH holders and their protection system since the 60's when the Cultural Properties Protection Act (CPPA or CPPL, Cultural Properties Protection Law) was promulgated in 1962. Law n. 961 concerns the protection of tangible and intangible cultural heritage. Since its enactment it was amended and enforced several times, the first time in 1982 and the last in 2004. In 2015, there was a new development in intangible cultural heritage national legislation: the enactment of the Act on the Safeguarding and Promotion of Intangible Cultural Heritage. This last development has been the most comprehensive act regarding both ICH and holders, which gained independence from the tangible heritage normative instrument.

The ROK is so fully aware of the importance of safeguarding and, especially, promoting this type of heritage, that these last few years there have been many talks regarding the increasing Korean “soft power.”⁵³

B. JAPAN

Japanese legislation had been used as a model for the Korean one. The 1950 Law for the Protection of Cultural Properties (文化財保護法 *Bunkazai Hogohō*) divided cultural properties into three categories:

⁵³ For more information see these articles: Yong-Ho Kim, “The false Promise of South Korea’s Olympic diplomacy,” *The Diplomat*, February 1, 2018, <https://thediplomat.com/2018/02/the-false-promise-of-south-koreas-olympic-diplomacy/>; Euny Hong, “Soap, sparkle and Pop,” *The Economist*, August 9, 2014, <https://www.economist.com/news/books-and-arts/21611039-how-really-uncool-country-became-tastemaker-asia-soap-sparkle-and-pop>; Mark Tran, “South Korea strives for Soft Power,” *The Guardian*, June 5, 2008, <https://www.theguardian.com/news/blog/2008/jun/05/southkoreastrivesforsoftp>.

1) tangible cultural properties; 2) intangible cultural properties and 3) historic sites, places of scenic beauty and natural monuments. Thus, also including intangible heritage under the Preservation Act. In 1954, this same law was amended and through ICH protection the category of “important intangible cultural property” included the bearers of elite traditional stage arts. “Folk intangible expressions were not considered as cultural properties under the law,”⁵⁴ even though the First Amendment (1954) considered “folk materials” as a notable category to draw a distinction between this and tangible cultural properties.⁵⁵

C. FRANCE

Regarding France, it has developed national measures since 1994 inspired by the Japanese 1950 legislation. During 1994, the Council of Art Crafts (Conseil des métiers d’art) was established and it explicitly defined living human treasures (in French: maître d’art), starting the process of selection of these people engaged with a “savoir-faire remarquable et rare.”⁵⁶ Until 2012, the proclamation was assigned to the Ministry of Culture by decree, afterwards the candidacies will be collected and selected by the Commission, part of the Institute of the métiers d’art (INMA), called “Sélection et évaluation Maîtres d’art – Élevés.”

Some documents shall be mentioned, such as: the Decree, 3 August 2004 regarding the Board of “métiers d’art” and their mission, (NOR: MCCI0400655A),⁵⁷ which establishes by law the mission, duties and composition of the Commission in charge of selecting the holders; and two interdisciplinary instruments which concern the creation of the label “entreprise du patrimoine vivant,” thus Law no. 2005-882, Art. 23, 2 August 2005 in favour of small and medium-sized businesses (General code of taxes, third Section, Art.244 O/4, III),⁵⁸ and the following Decree no. 2006-595, Art. 3-4, 23 May 2006, regarding the attribution of the trademark “entreprise du patrimoine vivant,” modified with Decree no. 2011-1091, 9 September 2011 and Decree no. 2013-591, 4 July 2013.⁵⁹

⁵⁴ From Noriko Aikawa-Faure, “Excellence and Authenticity: ‘Living National (Human) Treasures’ in Japan and Korea,” *International Journal of Intangible Heritage* 9, (2014): 39.

⁵⁵ For more information on this topic visit the following URL: “The Protection of Cultural Properties,” Ministry of Education Culture and Sport, accessed June 19, 2018, http://www.mext.go.jp/b_menu/hakusho/html/others/detail/1317481.htm.

⁵⁶ The sentence is translated from French to English as: “a remarkable and rare know-how”, this characteristic is enumerated together with the four other attributes a holder must fulfill. See: “La législation sur le patrimoine culturel immatériel,” Gouv. Fr., accessed June 19, 2018, <http://www.culturecommunication.gouv.fr/Thematiques/Patrimoine-culturel-immateriel/Candidater-instances-et-modalites/La-legislation-sur-le-PCI-dans-le-monde/La-legislation-sur-le-patrimoine-culturel-immateriel-en-France#PROTECTION>.

⁵⁷ Arrêté du 3 août 2004 relatif au conseil des métiers d’art et à la mission des métiers d’art.

⁵⁸ Law n. 2005-882, August 2, 2005 en faveur des petites et moyennes entreprises (NOR: PMEX0500079L).

⁵⁹ Decree n. 2006-595, May 23, 2006 relatif à l’attribution du label “entreprise du patrimoine vivant” (NOR: PMEX0600053D).

Chapter 2

Definitions, Frameworks and Historical Background

Section 1: Defining and understanding ICH

2.1.1. Intangible Cultural Heritage: A Definition

It is important to trace the origin of the expression: “Intangible Cultural Heritage” (ICH) in order to identify some of the processes and changes influenced by the discussions, conferences, meetings and legislative and normative instruments, which contributed to the establishment of the 2003 Convention for the Safeguarding of Intangible Cultural Heritage (ICHC).

Whilst some Member States still adopt other terms⁶⁰ at the national level, UNESCO’s definition remains the most inclusive, internationally recognized term used, despite the criticisms.⁶¹ Below are the key aspects of the UNESCO ICH terminology, it:

- broadens the concept of “cultural heritage” as defined by UNESCO at the World Heritage Convention (WHC);⁶²
- raises international awareness about the (co)existence of immaterial heritage alongside the material one;
- moves beyond the Eurocentric point of view, including traditional and indigenous cultures of non-Western countries and, at the same time, it excludes any hierarchical or elitist classification.

The ephemeral and diversified nature of this specific cultural property, together with its tight connection with communities, groups, and individuals’ own cultures are all aspects that had to be represented by the terminology in use, and which turned out to be a demanding task.

⁶⁰ “Most countries do not as yet refer explicitly to ‘intangible heritage’ in their national legislation” in Harriet Deacon, Luvuyo Dondolo and Sandra Prosalendis, *The Subtle Power of Intangible Cultural Heritage* (Cape Town: HSRC Publishers, 2004), 27.

⁶¹ See Janet Blake, *Developing a new standard*.

⁶² UNESCO, World Heritage Convention, article 1 reads: “For the purpose of this Convention, the following shall be considered as ‘cultural heritage’: monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science; groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science; sites: works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view.”

Since 1982, when the “Mondiacult” World Conference was held in Mexico City, until the 2003 ICHC proclamation, the international debate shifted from the definition of culture and cultural identity,⁶³ to the one of folklore and traditional culture and finally arriving to ICH as described in the ICHC.

The origin of the term "Intangible heritage" was not new to UNESCO Member States as it was officially used for the first time⁶⁴ in Mexico City during the World Conference on Cultural Policies⁶⁵ (also known as "Mondiacult") in 1982.

In the Conference Final Report (1982), under the “Protection of the Cultural Heritage” section, the word “intangible” is employed several times in Paragraph 85 Section 3:

“(...) the concept of heritage (...) now also covered all the values of culture as expressed in everyday life, and growing importance was being attached to activities calculated to sustain the ways of life and forms of expression by which such values were conveyed. The attention now being given to the preservation of the ‘intangible’ heritage may be regarded as one of the most constructive developments of the past decades.”⁶⁶

Here the word “heritage” includes everyday life cultural values and the adjective “intangible” describes the essence of the cultural patrimony, here defined as values, activities and forms of expression, all abstract concepts. Part III Paragraph 12 under Section 8.1 “Preservation and Presentation of the Cultural Heritage” provides a more pragmatic delineation of the term based on suggestions expressed by several delegates, who encouraged a wider scope of the protection by listing categories such as:

⁶³ For further details refer to: UNESCO, “World Conference on Cultural Policies Final Report,” in *General Report: The deepening and amplification of concepts* (Paris: UNESCO,1982), 8.

⁶⁴ It should be here noted that it is also possible to consider Richard Kurin’s assumption as valid. For the American cultural anthropologist, the term “intangible cultural heritage” evolved from the Japanese protection law, which was first established in 1950. See the Comment to the article of: Peter J.M. Nas, “Masterpieces of Oral and Intangible Culture: Reflections on the UNESCO World Heritage List,” *Current Anthropology* 43, n.1 (February 2002): 145.

⁶⁵ It was a conference held in Mexico City from the July 26 to August 6, 1982. The conference was called in by the Director-General of UNESCO, Mr. Amadou-Mahtar M’Bow in pursuance of the resolution 4.01 adopted by the General Conference at its 21st session. 126 Member States took part in the meeting. The purpose of the conference was to investigate the challenges taken into account after the 1970 Intergovernmental Conference on Institutional, Administrative and Financial Aspects of Cultural Policies, and concerning cultural policies and practices. In addition, exploring the problems of culture, at that time, and drafting new instructions in order to include culture in the world development process and promote international cooperation.

⁶⁶ UNESCO, “World Conference on Cultural Policies Final Report,” in *General Report: Preservation and Presentation of the Cultural Heritage* (Paris: UNESCO, 1982), 14.

“folklore, handicrafts, traditional techniques and trades, forms of the performing arts, folk customs and festivals, religious ceremonies and rituals, games, ancient sports and the like.”⁶⁷

The absence of languages from the suggestions should not be considered as an omission, indeed some delegates underlined the dangerous situation a large group of oral traditions and languages were undergoing.

Although some 2003 ICHC categories were already employed in this quotation from the 1982 Final Report, for instance: “performing arts” and “oral traditions,”⁶⁸ there are some discrepancies in terminology, like the introduction of “social practices, rituals and festive events” (in the 2003 text) instead of “folk customs and festivals” and “religious ceremonies and rituals,” thus widening the domain and eliminating the differences between civil and religious, popular and “high” cultural expressions. Moreover, further discussions were held where participants underlined the secular interpretation of this heritage and explicitly differentiated it from more orthodox opinions and religious morality⁶⁹ that characterize sacred traditions.

The most noteworthy change in defining ICH is the substitution of the word folklore, and all its derivatives. “Folk arts” and “folklore,” widely used at first, which had become inappropriate and inaccurate. Even though, it still remained the official term used in the 1989 Recommendation, the only written document that, whilst not binding, provided the basic text for the new normative instrument protecting ICH. The 1989 text states as follows:

“Folklore (or traditional and popular culture) is the totality of tradition-based creations of a cultural community, expressed by a group or individuals and recognized as reflecting the expectations of a community in so far as they reflect its cultural and social identity”⁷⁰

The definition also provides a list of forms, which can be considered under the term,⁷¹ and sets the means through which the expressions could be transmitted.

⁶⁷ UNESCO, “World Conference on Cultural Policies Final Report,” in *General Report: Preservation and Presentation of the Cultural Heritage* (Paris: UNESCO, 1982), 30.

⁶⁸ “Performing arts” is the second category in ICHC, “oral traditions” is the first one together with cultural expressions and language.

⁶⁹ This can be briefly illustrated by the UNESCO Intergovernmental Committee, Convention for the Safeguarding of Intangible Cultural Heritage, ITH/09/4.COM/CONF.209/INF.6, ¶ 30.

⁷⁰ UNESCO, *Recommendation on the Safeguarding of Traditional Culture and Folklore* (Paris: UNESCO, 1989), Chapter A, accessed June 19, 2018, http://portal.unesco.org/en/ev.php-URL_ID=13141&URL_DO=DO_TOPIC&URL_SECTION=201.html.

⁷¹ UNESCO, *Recommendation on the Safeguarding of Traditional Culture and Folklore*, chapter A: “Its forms are, among others, language, literature, music, dance, games, mythology, rituals, customs, handicrafts, architecture and other arts.”

In 2001 *Developing a New Standard-Setting Instrument for the Safeguarding of Intangible Cultural Heritage: Elements for Consideration*,⁷² some questions are stressed regarding whether some terminological changes are necessary in the developing process of ICHC. The definition given was considered:

- too limited, as it does not cover all the aspects of “traditional culture and folklore” to be safeguarded;
- more product-oriented than considering the ensemble of values and know-hows centered on individuals, groups and communities;
- constraining the reference to local heritage and traditional craftsmanship.⁷³

The 1989 text was subjected to other criticisms during the international conference held in 1999 in Washington D.C.,⁷⁴ regarding the recommendation and the preparation of a new international convention about safeguarding immaterial culture. Experts agreed on the inadequacy of the word “folklore” and of the expression “traditional cultures and folklore,” both used in the 1989 text. Criticisms were towards the narrowness and consumer orientation of these definitions,⁷⁵ and “folklore” support to the increasing “commodification”⁷⁶ of traditional cultures, and the risk of “folklorization.”⁷⁷ Furthermore, between 1995 and 1999⁷⁸ experts and practitioners underlined the pejorative connotation of the term “folklore,” which had to be dropped for a more conceptual definition,⁷⁹ as well as folklore studies⁸⁰ were criticized for the romanticized view of intangible heritage expressions.⁸¹ This field of study acquired a depreciated meaning; moreover, the term was not inclusive of the “high” cultural traditions,⁸² which had to be included inside the broader definition of immaterial cultural property.

⁷² Janet Blake, *Developing a New Standard-Setting*.

⁷³ Professor Blake points out positive elements too, which are not reported here as the analysis focuses on what had to be ameliorated. For a complete analysis see Janet Blake, *Developing a New Standard-Setting*.

⁷⁴ “In 1999, UNESCO and the Smithsonian Institution, Washington D.C., co-organized an international conference entitled ‘A Global Assessment of the 1989 Recommendation on the Safeguarding of Traditional Culture and Folklore: Local Empowerment and International Cooperation.’ The conference was the culmination of eight regional seminars held by UNESCO between 1995 and 1999.” in UNESCO, *Annotated Agenda, International Round Table: “Intangible Cultural Heritage – Working Definitions”* (Turin: UNESCO, 2001).

⁷⁵ Noriko Aikawa-Faure, “From the Proclamation of Masterpieces,” 13-44.

⁷⁶ For the term “commodification” see: Peter Seitel, *Proposed terminology for Intangible Cultural Heritage: toward anthropological and folkloristic common sense in a global era* (Paris: UNESCO, 2001), 6.

⁷⁷ Peter Seitel, *Proposed terminology for Intangible Cultural Heritage*, for the meaning of the word: “folklorization.”

⁷⁸ During this period of time some seminars regarding immaterial culture were held in different global regions.

⁷⁹ Peiter Seitel, *Safeguarding Traditional Cultures: A Global Assessment* (Center for Folklife and Cultural Heritage Smithsonian Institution, 2001), 39.

⁸⁰ An example of the negative evaluation of this field of study was the coining of the word “fakelore” by Richard M. Dorson, *Folklore and Fakelore: Essays towards a discipline of Folk Studies* (Cambridge: Harvard University Press, 1976).

⁸¹ Sophia Labadi, *UNESCO Cultural Heritage and Outstanding Universal Value: Value-Based Analyses of the World Heritage and Intangible Cultural Heritage Conventions* (Altamira: Rowman & Littlefield publishers, 2013).

⁸² Peter Seitel, *Safeguarding Traditional Cultures*, 38.

The most important attempt to find an internationally recognised and appropriate terminology in this cultural domain was during the Turin Conference in 2001,⁸³ where the expressions employed by Member States, governmental and non-governmental institutions concerning ICH were collected and examined. By the end of the round table a new definition was announced⁸⁴ which, however, was considered too theoretical.⁸⁵ Furthermore, in February 2000 UNESCO asked the state parties to fill out a questionnaire, which provided the working definitions used at the national level.⁸⁶ On the list, only one country (out of 36) had adopted or integrated the term ICH⁸⁷ in their own legislation:

- The Republic of Korea, in Article 2 of the Cultural Properties Protection Act, amended on July 1, 1999.⁸⁸ The widespread employment of the term "folklore, folk arts..." along with "ethnic culture"⁸⁹ or "ethnographic heritage"⁹⁰ can be observed in the audit,⁹¹ providing a wide-ranging definition of ICH, and reflecting the need of a more holistic definition, as stressed by Manuela de Cunha⁹² and Lourdes Arizpe,⁹³ as well as described in the Annotated Agenda of the Round Table (Turin, 2001).⁹⁴

⁸³ "It was the first expert meeting convened to reflect upon the conceptual framework of the future international instrument" in Noriko Aikawa-Faure, "From the Proclamation of the Masterpieces," 22.

⁸⁴ "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." From UNESCO, *Turin Round Table action plan* (Paris: UNESCO, 2001).

⁸⁵ "The Turin definition of intangible cultural heritage did not include this restriction to intangible cultural heritage, and only mentioned it in the recommendations. The group of experts agreed that the Turin definition was too academic for the purposes of the convention. Also, at the May 2002 meeting of UNESCO's Executive Board, it had been remarked that the 2001 Turin definition was perfectly valid from a scientific point of view, but also too abstract for operational purposes. Furthermore, it was felt that domains should be listed in the definition of intangible cultural heritage to make its scope clearer." from Willem Van Zanten, "Constructing New Terminology for Intangible Cultural Heritage," *Museum International* 56, n.1-2, (2004): 38.

⁸⁶ UNESCO, *International Round Table: Intangible Cultural Heritage – Working Definitions, Annotated Agenda*, (Paris: UNESCO, 2001), 3.

⁸⁷ UNESCO, *International Round Table*.

⁸⁸ "Intangible cultural property refers to drama, music, dance, handicrafts and other intangible cultural expressions of outstanding historical, artistic and academic value." from UNESCO, *International Round Table*, 2.

⁸⁹ Republic of Lithuania, in Law on the Principles of State Protection of Ethnic Culture, Law No. X-484, article 2, item 4, where the expression "Ethnic Culture" reflects the meaning of ICH inside the country's legislation: "Ethnic culture includes the sum total of cultural properties, created by the entire nation (etnos), passed from generation to generation and constantly renewed, which makes it possible to preserve the national identity and consciousness and uniqueness of ethnographic regions."

⁹⁰ As in the Spanish Law 16/1985 of 25th June concerning the Spanish historical heritage.

⁹¹ Numerous terms were used to describe ICH, the list provided is as follows: "In addition to 'intangible cultural heritage,' 'folklore,' 'traditional and popular culture,' 'oral heritage,' 'traditional knowledge,' and 'indigenous knowledge,' various other terms are frequently used in reference to this domain of heritage without specific working definitions. Examples include: 'oral traditions,' 'cultural community,' 'distortion,' 'integrity of the traditions,' 'revitalisation,' 'transmitters,' 'practitioners,' 'custodians,' 'bearers of knowledge,' 'creators and actors of traditional cultural expressions,' 'cultural and social identity,' 'performing arts,' 'traditional forms of folklore,' 'living culture,' 'folklorization,' 'cultural appropriation,' 'know-how,' 'technical skills,' etc.," in UNESCO, *International Round Table*, 4.

⁹² Manuela de Cunha is Professor at the Department of Anthropology, University of Chicago.

⁹³ Lourdes Arizpe is professor at the Centro Regional de Investigaciones Multidisciplinarias CRIM, Universidad Nacional Autonoma de Mexico UNAM, Former Assistant Director-General for Culture of UNESCO 1994-98.

⁹⁴ "In seeking to outline the form and elements of a working definition compatible with UNESCO's mandatory competence, certain considerations will need to be taken into account such as the conceptual difficulty of evaluating intangible cultural heritage with respect to its universal significance, while continuing to recognise the specificities of its manifestations and cultural diversity, and the need to safeguard the different views of intangible cultural heritage." in UNESCO, *International Round Table*, 5.

All these meetings and discussions contributed to the shaping of ICHC⁹⁵ and particularly in highlighting a new concept of culture and cultural identity, a debate which ran throughout all the Twentieth Century⁹⁶ in many sectors and disciplines. Thus, UNESCO 2003 Convention provides the most accurate and inclusive definition of ICH until now, formulated as follows:

“1. ‘The intangible cultural heritage’ means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artifacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity. For the purposes of this Convention, consideration will be given solely to such intangible cultural heritage as is compatible with existing international human rights instruments, as well as with the requirements of mutual respect among communities, groups and individuals, and of sustainable development.”⁹⁷

Article 2 Paragraph 1, in the section “Definitions,” denotes ICH with the fundamental characteristics of:

- essential to the identity of community, group, individuals;
- medium for the transmission of knowledge;
- changing/living;
- revitalization;
- sustainable.

It considers both intangible (practices, representations, expressions, knowledge, skills) and tangible elements (instruments, objects, artefacts and cultural spaces) and reflects the perspective of “indigenous

⁹⁵ “All the debates, which took place throughout the meetings in Marrakech, Washington, Turin, Elche and Rio from 1997 to 2002, attest the progressive building up of the definition and scope of ICH and of the ICHC” Noriko Aikawa-Faure, “From the Proclamation of Masterpieces,” 36.

⁹⁶ For more background information on the changing perspective on culture, refer to: Leslie A. White, “The Concept of Culture,” *American Anthropologist* 61, n.2 (April, 1959): 227-251; Melvin J. Lasky, “The Banalization of the Concept of Culture,” *Society* 39, n.6 (2002): 73-81; Nicholas Garnham, “Reaching for my revolver. Problems with the Concept of Culture,” *European Review* 9, n.4 (2001): 413-420.

⁹⁷ UNESCO, Intangible Cultural Heritage Convention, 2003, art. 2 ¶1-2.

and local cultures that are the holders of the cultural traditions,⁹⁸ where there is no distinction between material and immaterial heritage⁹⁹ at the local level. Its terminological richness was considered by some critics to encompass too much,¹⁰⁰ to be befuddling and the provisions to be too confusing and idealistic.¹⁰¹ Nevertheless, the new definition respected the need expressed during the Turin Round Table: to clearly list all the domains in order to provide precise guidelines,¹⁰² as article 2 Paragraph 2 clearly shows, by listing all ICH groups, respectively:

- a) oral traditions and expressions, including language as a vehicle of the intangible cultural heritage;
- b) performing arts;
- c) social practices, rituals and festive events;
- d) knowledge and practices concerning nature and the universe;
- e) traditional craftsmanship.

For each of these five categories a complete explanation is provided on UNESCO website.¹⁰³ These categories should not be considered as self-contained compartments, in fact they often overlap one another¹⁰⁴ (e.g. Festival of Folklore in Koprivshitsa,¹⁰⁵ Arirang Folk Song in the Democratic People's Republic of Korea,¹⁰⁶ Tradition of Kimchi-Making,¹⁰⁷ etc.). It is, thus, necessary to consider them fluid and inter-changing.

a) Oral Traditions and Expressions¹⁰⁸

⁹⁸ Janet Blake, *Developing a New Standard-Setting*.

⁹⁹ See Deacon, Dondolo and Prosalendis, *The Subtle Power of Intangible Cultural Heritage*, and Janet Blake, *Developing a New Standard-Setting*.

¹⁰⁰ See Sophia Labadi, *UNESCO, Cultural Heritage and Outstanding*.

¹⁰¹ See Richard Kurin, "Safeguarding Intangible Cultural Heritage in 2003 UNESCO Convention: A Critical Appraisal," *Museum International* 56-1,2, (2004), 70-71.

¹⁰² See note 88.

¹⁰³ See explanations at the following link: "What is intangible heritage?," ICH UNESCO, accessed June 19, 2018, <https://ich.unesco.org/en/what-is-intangible-heritage-00003>.

¹⁰⁴ By way of mere example, the 2009 experts meeting in Vitre clearly illustrate this point. The complete report of the meeting can be consulted at the following link: "Compte-rendu des journées de Vitre sur les pratiques alimentaires, 3 avril 2009," IIAC, accessed June 19, 2018, <http://www.iiac.cnrs.fr/article1007.html>.

¹⁰⁵ More information on the festival can be found at the following link: "Festival of folklore in Koprivshitsa: a system of practices for heritage presentation and transmission," ICH UNESCO, accessed June 19, 2018, <https://ich.unesco.org/en/BSP/festival-of-folklore-in-koprivshitsa-a-system-of-practices-for-heritage-presentation-and-transmission-00970>.

¹⁰⁶ More information on Arirang nomination can be found at the following link: "Arirang folk song in the Democratic People's Republic of Korea," ICH UNESCO, accessed June 19, 2018, <https://ich.unesco.org/en/RL/arirang-folk-song-in-the-democratic-peoples-republic-of-korea-00914>.

¹⁰⁷ The Rok nomination of the tradition of kimchi can be consulted by clicking on this link: "Tradition of kimchi-making in the Democratic People's Republic of Korea," ICH UNESCO, accessed June 19, 2018, <https://ich.unesco.org/en/RL/tradition-of-kimchi-making-in-the-democratic-people-s-republic-of-korea-01063>.

¹⁰⁸ UNESCO definition of oral traditions and expressions is described at the following page: "Oral traditions and expressions including language as a vehicle of the intangible cultural heritage," ICH UNESCO, accessed June 19, 2018, <https://ich.unesco.org/en/oral-traditions-and-expressions-00053>.

The first domain is defined "Oral Traditions and Expressions" and it is closely linked to language as a vehicle for traditional cultural expressions. In the 2002 Glossary, this category was simply named "Oral Expressions" and described as being: "*Aspects of intangible cultural heritage expressed through the spoken word or in song.*"¹⁰⁹ In the ICHC, a wider explanation is provided, which comprises proverbs, riddles, tales, nursery rhymes, legends, myths, epic songs and poems, charms, prayers, chants, songs, dramatic performances and more. Language, in any form, is a way of maintaining a culture alive, through the transmission of oral traditions, and represents the medium through which cultural identity is passed down. As Nicholas Garnham reminds us:

*"Human beings are defined in terms of the social group to which they belong, which is exemplified by participation in a common set of social practices. Participants then feel at home in a deep sense. Language is both the exemplar and, at the same time, the highest expression of this culture."*¹¹⁰

This item includes all kind of community, groups or individual traditional oral forms of expression, which are usually passed down from one generation to another. This uninterrupted transmission of knowledge and know-hows is becoming increasingly vulnerable due to globalisation, induced displacement of people due to social, economic or political changes, industrialisation and environmental change. Moreover, language considered in all its aspects, and not only as a mere medium,¹¹¹ has been the object of discussion for decades. Only during the 2001 Elche Jury Meeting, languages started to be considered as a pure medium, rather than an independent domain, when referring to ICH.¹¹² Thus, the lack of an active will in defending and promoting linguistic diversity and identity can partially be recognized in the UNESCO 2003 Instrument, as well as in the 2005 one.¹¹³

As of today,¹¹⁴ the list of Intangible Cultural Heritage¹¹⁵ contains 100 elements¹¹⁶ under this domain.

¹⁰⁹ Willem Van Zanten, *Glossary Intangible Cultural Heritage* (Paris: UNESCO, 2002), 5.

¹¹⁰ Nicholas Garnham, "Reaching for my revolver. Problems with the Concept of Culture," *European Review* 9-4, (2001).

¹¹¹ In fact, language is considered in the 2003 ICHC as the exclusive form of medium, vehicle of transmission of determined forms of traditional culture, as art. 2.2 states: "oral traditions and expressions, including language as a vehicle of the intangible cultural heritage."

¹¹² See Noriko Aikawa-Faure, *From the Proclamation of Masterpieces*, 33. The observations made during the Elche Jury Meeting are analysed in section 2.1.6 of the thesis.

¹¹³ A more detailed analysis is showcased in: Lauso Zagato, "Il ruolo della lingua nella costruzione (mantenimento e sviluppo) delle identità culturali. Riflessioni alla luce dei nuovi strumenti UNESCO," in curated by Maurizio Cermel, *Le minoranze etnico linguistiche in Europa tra stato nazionale e cittadinanza democratica* (Padova: CEDAM, Dott. Antonio Milani Publishing, 2009), 229-254.

¹¹⁴ Accessed December 3, 2017.

¹¹⁵ The list comprises the Urgent Safeguarding List, Representative List and Register of Good Safeguarding Practices.

¹¹⁶ "Oral traditions and expressions list items," ICH UNESCO, accessed June 19, 2018, <https://ich.unesco.org/en/lists?text=&inscription=0&country=0&multinational=3&type=0&domain=02#tabs>.

b) Performing Arts¹¹⁷

This domain comprises dance, theatre, music and other acting cultural expressions. It contains 144 elements¹¹⁸ registered on the Representative List, and three elements on the Urgent Safeguarding List. Beside knowledge, know-hows and skills, this category includes tangible objects as well, such as: musical instruments, traditional clothes, masks, body decoration and any other goods that inevitably accompany the performances. Spaces are fundamental withal, they are not secondary to the heritage itself, but the heritage is necessary to them in order to acquire a meaning. In fact, cultural spaces are considered to be the continuity between tangible and intangible heritage, a place within cultural expression, which does not have typical land characteristics,¹¹⁹ but instead can be movable and even transnational.¹²⁰

These types of performances are threatened by forced migrations, standardization, commodification and tourism. This last one holding both positive and negative aspects, which are important to consider while safeguarding using cultural promotion.

c) Social Practices, Rituals and Festive Events

This domain contains 158 elements.¹²¹ Events, rituals and social practices "are significant because they reaffirm the identity of those who practice them as a group or a society."¹²² A wide array of activities can be classified under this category:

“Worship rites; rites of passage; birth, wedding and funeral rituals; oaths of allegiance; traditional legal systems; traditional games and sports; kinship and ritual kinship ceremonies; settlement patterns; culinary traditions; seasonal

¹¹⁷ “Performing arts,” UNESCO, accessed June 19, 2018, <https://ich.unesco.org/en/performing-arts-00054>.

¹¹⁸ “List of performing arts items,” ICH UNESCO, accessed June 19, 2018, <https://ich.unesco.org/en/lists?text=&inscription=0&country=0&multinational=3&type=0&domain=03#tabs>.

¹¹⁹ “Uno spazio culturale non è un bene immobile. Esso può essere trasferito se la comunità che custodisce il patrimonio o alcuni membri della stessa si spostano altrove.” in Tullio Scovazzi, “La convenzione per la salvaguardia del patrimonio culturale intangibile,” in edited by Tullio Scovazzi, Benedetta Ubertazzi and Lauso Zagato, *Il patrimonio culturale intangibile*, 18.

¹²⁰ “Falconry a living human heritage,” ICH UNESCO, accessed June 19, 2018, <https://ich.unesco.org/en/RL/falconry-a-living-human-heritage-01209>. It is one of the examples of a transnational ICH in the Representative List, as well as the “Mediterranean Diet” shared between Croatia, Cyprus, Greece, Italy, Morocco, Portugal, Spain. UNESCO has been encouraging multinational registrations in order to promote mutual cooperation. “Mediterranean diet,” ICH UNESCO, accessed June 19, 2018, <https://ich.unesco.org/en/RL/mediterranean-diet-00884>.

¹²¹ “Social practices rituals and festive events items list,” ICH UNESCO, accessed June 19, 2018, <https://ich.unesco.org/en/lists?text=&inscription=0&country=0&multinational=3&type=0&domain=04#tabs>.

¹²² “Social practices rituals and festive events,” ICH UNESCO, accessed June 19, 2018, <https://ich.unesco.org/en/social-practices-rituals-and-00055>.

*ceremonies; practices specific to men or women only; hunting, fishing and gathering practices and many more.*¹²³

Cohesion and identification are fundamental aspects for this domain. They can provide continuity with the past communities' activities, values and traditions.

One of the biggest issue threatening this heritage is emigration, especially of young people leaving their villages to find better opportunities in other countries or cities, increasing the loss of their cultural identity together with the impossibility, for those who remain, to transmit their native traditional culture to future generations.

d) Knowledge and Practices Concerning Nature and the Universe¹²⁴

This category is strictly connected to the natural environment, as well as to indigenous knowledge.¹²⁵ It concerns skills and wisdom related to nature, cosmology, local fauna and flora as well as traditional ecological knowledge. At this moment, there are 67 elements registered.¹²⁶

Local environment shapes the worldview, beliefs and techniques of people living in a specific place. Globalisation and external or internal displacements of persons, as well as climate change are mining the transmission of these natural world know-hows.

The media through which all these systems of belief can be manifested are numerous, such as: language, rites, oral traditions or even feelings of attachment towards a place. Unlike the scientific approach of natural science, this worldview can represent a divine cosmology that connects earthly beings and the universe through sacred forces, beliefs and rites. As Fulvio Mazzocchi¹²⁷ stressed:

“Western science is positivist and materialist in contrast to traditional knowledge, which is spiritual and does not make distinctions between empirical and sacred. Western science is objective and quantitative as opposed to traditional knowledge, which is mainly subjective and qualitative. Western science is based on an

¹²³ UNESCO, *Convention on the safeguarding of Intangible Cultural Heritage* (Paris: UNESCO, 2003), 11.

¹²⁴ “Knowledge concerning nature and the universe,” ICH UNESCO, accessed June 19, 2018, <https://ich.unesco.org/en/knowledge-concerning-nature-00056>.

¹²⁵ See Lauso Zagato, “La Convenzione sulla protezione del patrimonio culturale intangibile,” ed. by Lauso Zagato, *Le identità culturali nei recenti strumenti UNESCO. Un approccio nuovo alla costruzione della pace?* (Padova: CEDAM, 2008), 37-38.

¹²⁶ “Browse the list of ICH and good safeguarding practices,” ICH UNESCO, accessed June 19, 2018, <https://ich.unesco.org/en/lists?text=&inscription=0&country=0&multinational=3&type=0&domain=05#tabs>.

¹²⁷ Researcher at the Italian National Resource Council.

academic and literate transmission, while traditional knowledge is often passed on orally from one generation to the next by the elders."¹²⁸

e) Traditional Craftsmanship¹²⁹

The fifth category could represent one of the most connected with less immaterial aspects, which can be part of a traditional cultural expression. It focuses on man's craftsmanship and it actualises in visible cultural forms, such as: crafts, tools, clothing, jewelry, and so on. However, the 108 elements¹³⁰ that have been classified under this category do not focus on the tangible final products, but rather on the skills, practices and knowledge employed by human creativity and ability in order to produce traditional crafts and goods. In the 1989 Recommendation, the limited reference to traditional knowledge and know-hows was valued as one of its major shortcomings. In this sense, the 2003 Convention was able to improve the recognition of a more immaterial aspect of human craftsmanship.

Mass production of merchandise and utensils is posing big problems to the safeguarding, spreading and circulation of this intangible cultural heritage. Changing traditions and humans needs are, after all, influencing the marketplace. For this reason, the request of traditional goods became something more related to rural or ancestral societies. In addition, time, apprenticeships and remuneration are different from those of mass production, causing a loss of interest and eligibility.

2.1.2. Recommendation on the Safeguarding of Traditional Culture and Folklore (UNESCO - 1989)

The urgent need to adopt an international instrument for the safeguarding of traditional culture and folklore was declared during the UNESCO General Conference at the 24th session, in Resolution 15.3. Afterwards, the final text was approved on November 15, 1989 at the 32nd plenary meeting. The genesis of the international request for a recommendation on folklore arose from the need to protect popular traditions and culture through legal measures, especially under the category of Intellectual Property. A list of the meetings and documents, which concern the topic of folklore's legal protection, can mitigate the distance between the final cultural focus of the 1989 UNESCO document and the preceding working stages:

- 1952, Universal Copyright Convention;
- 1967, Revision of the Berne Convention at the Stockholm Conference;

¹²⁸ Fulvio Mazzocchi, "Western science and traditional knowledge," *EMBO Reports* 7, n.5, (2006): 463–466.

¹²⁹ "Traditional craftsmanship," ICH UNESCO, accessed June 19, 2018, <https://ich.unesco.org/en/traditional-craftsmanship-00057>.

¹³⁰ "Browse the list of ICH and good safeguarding practices," ICH UNESCO, accessed June 19, 2018, <https://ich.unesco.org/en/lists?text=&inscription=0&country=0&multinational=3&type=0&domain=07#tabs>.

- 1973, UNESCO's response to Bolivia by calling for an analysis of "Intellectual Property" regarding folklore;
- 1976, UNESCO-WIPO preparation for the Tunis Model Copyright Law for Developing Countries;
- 1977, Tunis, Experts' meeting concerning the legal protection of folklore;
- 1980-1981, UNESCO-WIPO joint meetings for the Working Groups on the Intellectual Property aspects of Folklore Protection;
- 1982, UNESCO-WIPO Committee of Governmental Experts on Intellectual Property Aspects of the Protection of Folklore Meeting;
- 1983, Preliminary study on the technical and legal aspects of the safeguarding of folklore;¹³¹
- 1985, UNESCO-WIPO, Model Provisions for National Laws on the Protection of Expressions of Folklore against Illicit Exploitation and Other Prejudicial Actions.

The draft and adoption of the final resolution took fifteen years. The discussions and requests of a more inclusive international legislation regarding popular and traditional expressions had started since 1952, when the Universal Copyright Convention was adopted, and where folklore and cultural traditions, but also any kind of expressions of non-physical heritage were not contemplated. It should not seem strange that a convention written in the Fifties did not include a more ephemeral heritage, it should only be considered that 20 years later the 1972 World Heritage Convention will not yet comprise intangible heritage under its protection. However, the examination period for the establishment of an international legal instrument for the protection of the rights concerning folklore had already begun in 1952 and had continued for the following decades. In 1967, a revision of the Berne Convention¹³² was announced. The international community asked for the incorporation of folklore expressions in the copyright law, thus resulting in the addition of a provision inside the Berne Convention. Nevertheless, the new article,¹³³ agreed upon during the Stockholm Conference, does not refer to folklore or any of its terminological variations, but it simply moves to a more general protection which could remotely introduce some elements of the folklore expressions and its authorship.

¹³¹ UNESCO, Document 116 EX/26.

¹³² The Berne Convention, also known as the Berne Convention for the Protection of Literary and Artistic Works, is an International Convention, which took place on September 9, 1886. Before the final amendment in 1979 (Paris), it was subjected to various modifications. As its name suggests, it deals with the protection of the rights of authors and literary works. This convention is administered by WIPO, and it includes 185 contracting countries.

¹³³ The "New Article" to which the text refers to, is article 15, 4 (a) of the provisions adopted at the 1967 Stockholm Conference, held on July 14th. The article reads: "In the case of unpublished works where the identity of the author is unknown, but where there is every ground to presume that he is a national of a country of the Union, it shall be a matter for legislation in that country to designate the competent authority which shall represent the author and shall be entitled to protect and enforce his rights in the countries of the Union."

Shortly afterwards, in 1973 the government of Bolivia asked for an addition to the 1952 Copyright Convention, such as to include folklore under its aegis. The submission to the Intergovernmental Copyright Committee was then handed over to UNESCO.

The theme of folklore protection was not new to the cultural and scientific bureau of the United Nations. In 1971, a document entitled “Possibility of Establishing an International Instrument for the Protection of Folklore”¹³⁴ was prepared, and then put aside until 1975, when UNESCO submitted this same document to the Intergovernmental Copyright Committee. Cultural and intellectual property issues were then differentiated, calling on UNESCO and WIPO experts’ joint work for the following years.

Since 1975, the two above mentioned international organizations started to work together in order to fulfill the more demanding task of an international commitment for safeguarding folklore. In 1976, the Tunis Model Copyright Law for Developing Countries was developed through the joint work of both UNESCO and WIPO. The official agreement on the separation of works, dealing with the protection of folklore, arrived in May 1978,¹³⁵ when both the secretariats of UNESCO and WIPO decided on the limited participation of the latter on topics concerning the issue of intellectual property rights.

A turning point in the international approach on the theme of folklore can be identified in the meeting held in 1982 and called by UNESCO. The committee of governmental experts adopted some important recommendations and the first definition of folklore was firmly established.¹³⁶ This same definition will be applied to the 1989 Recommendation text¹³⁷ which will “copy” much of the contents from the previous definition. The layout of the subjects, under which the recommendations are listed, will also influence the final resolution: definition, identification, conservation and preservation are the main chapters that will be maintained and further expanded and modified in the following documents. The conclusions of the 1982 document recall that the UNESCO formulation of an international recommendation is expected¹³⁸ and accorded by the General Conference resolution 5/03, at its 21st session.

¹³⁴ UNESCO document, B/EC/IX/11-IGC/XR.1/15.

¹³⁵ In 1985, at the UNESCO 23rd General Conference, the UN specialized agency decided on taking the task to develop an international recommendation, leaving aside the IPRs, a matter regarding WIPO concerns. For further information see: Lauso Zagato, “La Convenzione sulla protezione del patrimonio culturale intangibile,” 27-70.

¹³⁶ “Folklore (in a broader sense, traditional culture) is a group-oriented and tradition-based creation of groups or individuals reflecting the expectations of the community as an adequate expression of its cultural and social identity; the standards and values are transmitted orally, by imitation or by other means.” UNESCO-WIPO, 116 EX/26 - *Committee of Governmental Experts on the safeguarding of Folklore, Recommendations*, p. 1.

¹³⁷ “Folklore (or traditional and popular culture) is the totality of tradition-based creations of a cultural community, expressed by a group or individuals and recognized as reflecting the expectations of a community in so far as they reflect its cultural and social identity; its standards and values are transmitted orally, by imitation or by other means.” UNESCO, *Recommendation on the Safeguarding of Traditional Culture and Folklore*, point (A) “Definition of Folklore,” in Resolution 7.1 adopted by the General Conference at its 25th session.

¹³⁸ “The Committee also recommended that UNESCO continue its studies and deliberations aimed at formulating an international recommendation on the preservation and safeguarding of folklore and of traditional popular culture, in accordance with resolution 5/03 adopted by the general Conference of UNESCO at its twenty-first session.” UNESCO, 116/ EX/26.

Meetings and works had been proceeding on this same topic for years; several groups and committees were set up and worked together: UNESCO-WIPO members were jointly organised in several groups and committees: 1) Working Groups¹³⁹ and Committee of Governmental Experts¹⁴⁰ on the Intellectual Property Aspects of Folklore Protection, 2) Expert Committee,¹⁴¹ 3) Committee of Experts on the International Protection of Expressions of Folklore by Intellectual Property,¹⁴² and 4) three regional working groups;¹⁴³ in 1987, the governing bodies of WIPO, and UNESCO and WIPO together established the Committee of Governmental Experts in order to carry on the research on the measures to adopt in order to safeguard folklore at the international level. In addition, the UNESCO Committee of Governmental Experts on the Safeguarding of Folklore,¹⁴⁴ as well as the Special Committee of Technical and Legal Experts on the Safeguarding of Folklore¹⁴⁵ were established. The subject was analysed from many different perspectives, even though important issues related to the protection of folklore still remained. On the other hand, the rising global interest on this topic was testified by the numerous working groups organised during those years.

The model of a recommendation for the protection of traditional culture had already been suggested inside the conclusions¹⁴⁶ to the 1982¹⁴⁷ recommendations written by UNESCO governmental experts. However, it was only in 1985 that the recommendation model was preferred over the international convention one, and it was formally established for the safeguarding of folklore as a whole.¹⁴⁸ UNESCO convened the second Committee of Governmental Experts in Paris, in order to study the possibility of a set of regulations for the protection of folklore under various aspects, then confirmed by the decision of the General Conference at its 23rd session, through the draft Resolution 15.3.

The conclusions released by the second committee provided an appropriate basis for the final document on the safeguarding of folklore. The recommendations compiled in 1982 were used as a useful example and they were expanded by the final document by adding more chapters concerning: dissemination,

¹³⁹ Two meetings were held: the first in Geneva, January 1980; the second in Paris, February 1981.

¹⁴⁰ Meeting in Geneva, July 1982.

¹⁴¹ Four meetings proceeded each other from 1981 to 1984: Bogota, October 1981; New Delhi, February 1983; Dakhar, February 1983; Doha, October 1984.

¹⁴² Paris, December 1984.

¹⁴³ These working groups represented three international regional areas, respectively: Latin America and the Caribbean, Africa, and Asia and the Pacific. They met in 1981, 1982, and 1983. The goal of these subdivisions (in regional areas of the world) was to seek cultural similarities and differences to be taken into account when trying to apply intellectual property rights dealing with folklore.

¹⁴⁴ February 1982; January 1985.

¹⁴⁵ On June 1987.

¹⁴⁶ See note 138.

¹⁴⁷ Objectives and areas for an international instrument for the safeguarding of folklore were studied in Paris, from January 14th to 18th during the second meeting of governmental experts. The first meeting was held in February 1982 and led to the identification of some recommendations.

¹⁴⁸ See: Samantha Sherkin, "A Historical Study on the Preparation of the 1989 Recommendation," in ed. by Peter Seitel, *Safeguarding Traditional Cultures* 49; and UNESCO/PRS/CLT/TPC/II/5, Report of the Second Committee of Governmental Experts on the Safeguarding of Folklore, Paris 14-18 January 1985, point 51.

intellectual property aspects and other rights involved, and international cooperation. The final resolution was slowly starting to take shape.

In 1987, WIPO kept its distance from this discussion; indeed, the organisation considered that it was too early to talk about folklore property rights, as it was first necessary to establish a preservation and identification system¹⁴⁹ through UNESCO efforts.

The work done in the preceding fifteen years by UNESCO, WIPO and Member States, helped to draft a first recommendation¹⁵⁰ text, which was prepared and presented on June 1, 1988 by the Special Committee of Governmental Experts. The final recommendation text followed afterwards and took effect in 1989 at the General Conference's 25th session on November 15th.

The historical overview of the recommendation drafting process underlines how the introduction of folklore as a possible internationally recognized document, through several discussions, meetings and conferences, grew from the idea of protecting folklore copyright and intellectual property rights. In fifteen years, the question shifted from the establishment of some forms of legal protection to the identification, safeguard and “physical” protection, as well as the awareness raise, at the international level, of the risks which all human forms of cultural expressions and traditions were under. In the long run, the perspective changed from the protection of intellectual property to a more holistic view focused on cultural preservation and protection,¹⁵¹ which firstly needed to be safeguarded through revitalization and transmission, thus strongly influencing UNESCO's attitude towards heritage. For these reasons, the 1989 Recommendation stands as a milestone for the development of a set of international instruments more inclusive in terms of the variety of manifestations of the material and immaterial culture, which were previously limited to objects and sites¹⁵² (such as churches, buildings, landscapes, etc.).

The instrument consists of an international soft law document, in the form of a recommendation. The Preamble explicitly states the inclusion of folklore in the realm of the “universal heritage of humanity,”¹⁵³ an important element extraneous to the previous documents, which some experts considered

¹⁴⁹ See: Samantha Sherkin, “A Historical Study on the Preparation of the 1989 Recommendation,” 50.

¹⁵⁰ UNESCO Document CC/MD/4.

¹⁵¹ Even though UNESCO and WIPO worked together in the development of the 1989 Recommendation, since 1975 onwards UNESCO has been focusing on the safeguarding of cultural expressions rather than on IPRs related issues, which are the WIPO's field of work. Advice delivered in 2001 *Preliminary Study into the Advisability of Developing a New Standard-Setting Instrument for the Safeguarding of Intangible Cultural Heritage*, where Janet Blake reaffirms the need to do not duplicate other IGOs fields of work in the new upcoming convention. Janet Blake, *Preliminary Study into the Advisability*, 82.

¹⁵² Here there is an implicit reference to the UNESCO 1972 World Heritage Convention.

¹⁵³ “Considering that folklore forms part of the universal heritage of humanity.” UNESCO, *Recommendation on the Safeguarding of Traditional Culture and Folklore*.

a negative introduction causing an unprotected exposure to the “public domain.”¹⁵⁴ Another important deficiency, which can be inferred from the Preamble, is the narrowness of the recommendation, which considers as main stakeholders Member States’ scholars, researchers and authorities involved in safeguarding. On the other hand, it partially excludes the communities of practitioners, holders and people involved in the assignment of values and significance to cultural practices, which are deeply rooted in specific groups.¹⁵⁵

The text is divided into seven chapters, respectively: Definition of Folklore, Identification of Folklore, Conservation of Folklore, Preservation of Folklore, Dissemination of Folklore, Protection of Folklore, and International Cooperation.

As it concerns the first chapter, where the definition of heritage is stated, it is useful to recall that the first attempt to determine a clear terminological approach was made in 1982 and then further improved in 1985. Both documents were drawn up by the Committee of Governmental Experts. During the conference held in Washington D.C. by the Smithsonian Institute (1999), the same definition was described as inaccurate.¹⁵⁶ On the other hand, it was for the same reason that several governments underlined the need to ameliorate the definition of folklore and traditional cultures in the responses of Member States to the first draft of the recommendation,¹⁵⁷ even before the adoption of the recommendation in 1989.

The analysis of the final text starts from the first chapter on the identification of folklore. It recommends Member States to establish an inventory (a) the collection of materials, and (b) the task of stimulating “the creation of a standard typology of folklore.”¹⁵⁸ Special attention should be paid to this last instruction, which considers the Member States’ role in the stimulation of a standardisation of the various immaterial manifestations of culture a good practice for the identification and categorization of folklore in

¹⁵⁴ In Anthony McCann, “The 1989 Recommendation Ten Years On: Towards a Critical Analysis,” in edited by Peter Seitel, *Safeguarding Traditional Cultures*, 60. The author states: “An objection was also made to calling folklore part of the ‘universal heritage’ of humankind. While the intent in this terminology may be to valorize folklore, its effect could be construed as placing folklore within ‘public domain’ and hence not subject to protection by copyright.”

¹⁵⁵ This deficiency has been commented on by various experts. Here are some of the main texts which examine the problem: Anthony McCann, “The 1989 Recommendation Ten Years On: Towards a Critical Analysis,” in edited by Peter Seitel, *Safeguarding Traditional Cultures*; Janet Blake, *Developing a New Standard-setting Instrument for the Safeguarding of Intangible Cultural Heritage, Elements for Consideration* (Paris: UNESCO, 2002). Moreover, in Document CC/MD/8 collecting all Member States’ responses to the circular letter CL/3121 (June 1, 1988) sent in response by the Norwegian government, the problem of the exclusion of performers, and transmitters from the protection and expertise considered in the safeguarding of traditional cultures was outlined. According to the suggestions, the focus on archiving and collecting materials should had been shifted to participation and living performances.

¹⁵⁶ See Janet Blake, *Developing a New Standard-setting Instrument*, 7, 30n: “Tora, S., ‘A Pacific Perspective,’ paper presented at the Washington Conference.”

¹⁵⁷ Member States responses to the Circular Letter CL/3121 and Document CC/MD/4.

¹⁵⁸ UNESCO, *Recommendation on the Safeguarding of Traditional Cultures and Folklore* (Paris: UNESCO, 1989), ¶ C.

order to provide a valid and useful instrument “for global use.”¹⁵⁹ This recommendation will be revised in Art. 13, d, ii¹⁶⁰ of the latter convention.

Once again it should be noticed how the provisions mainly address governmental experts and researchers with the only exception of the first statement, where communities and groups of people directly involved in the creation of cultural expressions are mentioned and identified as the main actors in creating that sense of identity of which folklore is the fundamental ingredient. The selection bias is another potential concern, as it consists of the criteria to be adopted by Member States in order to distinguish between folklore and non-folklore expressions for national inventories.¹⁶¹

Conservation of Folklore, the third section inside the recommendation, consists of a rather peculiar chapter that focuses on the protection of tangible elements of folk traditions. This chapter will not appear as a settled and comprehensive unit inside the later 2003 Convention, which focuses more on the living character of ICH. In fact, important and similar directives are given in the operational guidelines to the Convention, which recall the Recommendation text. As a matter of fact, Member States are always reminded of this fundamental characteristic by the 2003 text’s encouragement to always keep inventories up-to-date. The reference to researchers and scholars is evident especially because the measures suggest to collect and archive, when appropriate, the materials related to folklore, and to train collectors, archivists and specialists from various areas. The choice to collect important materials in this area can be considered valuable for the historical and academic reconstruction of folklore expressions, especially for those inactive or at risk of disappearance. However, it should be noted that the recommendations primarily consider only a small part of the folklore expressions, those “fixed in a tangible form.”¹⁶²

Chapter D is concerned with the Preservation of Folklore, both traditions and bearers¹⁶³ are regarded as elements to be preserved from the dangers of culture homogenisation. The recommendations deal with: education,¹⁶⁴ community support through different measures, creation of a national council on

¹⁵⁹ UNESCO, *Recommendation on the Safeguarding of Traditional Cultures and Folklore*.

¹⁶⁰ “Ensuring access to the intangible cultural heritage while respecting customary practices governing access to specific aspects of such heritage.” From UNESCO, *Convention for the Safeguarding of Intangible Cultural Heritage* (Paris: UNESCO, 2003), Art. 13.

¹⁶¹ On this subject see Janet Blake, *Developing a New Standard-setting Instrument for the Safeguarding of Intangible Cultural Heritage, Elements for Consideration*, (Paris: UNESCO, 2002), 34.

¹⁶² UNESCO, *Recommendation on the Safeguarding of Traditional Cultures and Folklore*, (Paris: UNESCO, 1989), ¶ C.

¹⁶³ The first lines of letter (D) on the Preservation of Folklore states: “Preservation is concerned with protection of folk traditions and those who are the transmitters (...),” it is important to underline that in the first draft of the recommendation the transmitters were not taken into consideration. Iraq’s response to the circular letter CL/3121 suggested this addition, as well.

¹⁶⁴ Concerning the theme of education, an interesting addition proposed by the Mexico government in 1988, in response to the circular letter CL/3121 and published in Document CC/MD/8, suggested that an appropriate manner to introduce folklore in schools should be sought through an ethnic curricula designed by indigenous experts. This addition would have introduced a more symbiotic relationship between governments and indigenous communities.

folklore, financial and moral support, and research promotion in the field. As the Brazil government noted in 1988 in its response to the circular letter CL/3121,¹⁶⁵ the distinction between conservation and preservation is noteworthy because it foreshadows a double interest, both active and passive, and includes different actors such as researchers as well as the creators of such expressions. Nonetheless, the transmitters' involvement is always secondary to the researchers' participation, an iteration of a negative feature which has already been stressed several times. Moreover, given that the theme of protection is closely related to the commercialization and to the ethics concerning folklore and its management and safeguard, UNESCO together with the Stranice Institute of Folk Cultures published two volumes entitled: *Principles of Traditional Culture and Folklore Protection Against Inappropriate Commercialization* (1997), and *Ethics and Traditional Folk Culture: Study on Moral Consciousness and Conduct in Manifestations of Traditional Folk Culture* (1999). In addition, the Forum in Phuket held in 1997 and co-organized by UNESCO and WIPO covered the issue of protection, and it was followed by four regional seminars¹⁶⁶ on the legal methods for the safeguarding of traditional knowledge and cultural expressions.

The dissemination is regarded as an essential element in order to attract public attention, and to raise people's awareness on the topic. For this reason, the fifth section of the resolution encourages the organization of events and festivals,¹⁶⁷ workshops, dissemination of materials and information related to folk expressions through various media, creation of new job opportunities, support of works and research already conducted and their dissemination, and encouragement of any form of contacts and spread of information and data regarding the topic. All these goals should be achieved through a proper ethical conduct and through the support of an ethical environment for cultural traditions at the international level. The theme of "distortion" recalls the meeting held in February 1982, where a committee of governmental experts met to discuss issues regarding the measures to be taken against the risk of distortion.¹⁶⁸ With hindsight, it should be remembered that folklore is a living tradition and thus it can change over time. On this basis, the government of Finland¹⁶⁹ expressed the need to delve into this subject.

¹⁶⁵ The circular letter CL/3121 refers to document CC/MD/4, both on June 1, 1988. Member States' replies were collected by UNESCO in Document CC/MD/8 on January 31, 1989.

¹⁶⁶ The four regional seminars were held, respectively: for Africa (Pretoria), March, 1999; for Asia-Pacific (Hanoi), April, 1999; for the Arab States (Tunis), May, 1999; for Latin America and the Caribbean (Quito), June, 1999. For more information on these meetings see: Noriko Aikawa, *The UNESCO Recommendation on the Safeguarding of Traditional Culture and Folklore (1989): Actions Undertaken by UNESCO for its Implementation*, in edited by Peter Seitel, *Safeguarding Traditional Cultures*, 17; and "WIPO meetings archive," WIPO, accessed June 19, 2018, http://www.wipo.int/meetings/en/archive_meeting.jsp.

¹⁶⁷ Some of the events and festivals co-organized by UNESCO together with other organizations are: MASA-Market of African Performing Arts (1997, 1999); the Fez Sacred Music Festival in Morocco (1996, 1997); the Samarkand Eastern Music Festival in Uzbekistan (1997, 1999).

¹⁶⁸ UNESCO, 1982, Document 116 EX/26, Art. 15: "Unesco formulates criteria to ensure that the use of folklore outside its original environment does not lead to its distortion or debasement."

¹⁶⁹ In the Member States' responses to the circular letter CL/3121 and Document CC/MD/4 related to the first draft of the recommendation, Finland replied: "In the introduction to section E, it is said that any caricature or distortion of folklore

The intellectual property aspects and other rights, which were key issues in the drafting process of the recommendation, are part of Chapter F dealing with protection. The WIPO authority is fully recognized when talking about “intellectual property” rights and related rights (such as those linked to transmitters and collectors of archive materials, both for their conservation and use). Once more the recommendations focus more on data and materials collection, rather than on knowledge and know-hows owned by communities of bearers. Moreover, the statement “In so far as folklore constitutes manifestation of intellectual creativity”¹⁷⁰ raised some doubts and critics. In fact, the sentence could be misinterpreted as individualizing some folklore expressions, which are not based on intellectual creativity; considered by some experts a concept unrelated to the subject.

The last section discusses “International Cooperation” between Member States and international and regional organizations. The cooperation should enhance the revitalization and dissemination of folklore. In order to do so, Member States should collaborate in any of the areas concerning folklore, such as: knowledge, dissemination, and protection. The cooperation should also ensure rights control over the utilization of traditional culture, and protection against abuse of power and against dangers resulting from political or natural causes. Chapter G can be divided into two sections: the first one goes from letter (a) to letter (b) and it concerns revitalization as well as documentation and classification, the latter consists of the recommendations (c), (d), (e), and (f), which deal with protection of the rights involved. The main efforts of UNESCO under this area are at the regional level, where a network of traditional music institutions for Africa and Arab countries was created, as well as the establishment of an European Centre for Traditional Culture (ECTC) in Budapest,¹⁷¹ and the creation of a network of research institutions for the safeguarding, revitalization, and dissemination of the traditional and popular cultural heritage in the sub-region of Central and Eastern Europe.

As a non-binding instrument, the recommendation does not set any rigid rule to be followed, except for the periodic reports on the implementations to be submitted.¹⁷² The first reporting procedure took place

should be avoided. In interpreting this section, it should be borne in mind that the preservation of a living tradition demands the continual reassessment of the tradition. New interpretations of a work of folklore are often considered insulting when they first appear. If this statement is retained in the recommendation, it would be worth calling attention to the question of interpretation in an explanatory note.” A similar objection was made by Sweden in its notes for the same document.

¹⁷⁰ Anthony McCann sustains that the idiom “in so far” would be better substituted by “because”, as all kinds of folklore manifestations can be “attributed to individual and/or collective creativity”, from Anthony McCann, “*The 1989 Recommendation Ten Years on*,” 61.

¹⁷¹ See Noriko Aikawa, “*The Recommendation on the Safeguarding*,” 17-18.

¹⁷² UNESCO Constitution, under Article VIII states that Member States should submit reports regarding recommendations and conventions and the acts taken under their auspices respecting the times established by the General Conference.

in 1991, the general feedback was not positive as only three Member States replied on time¹⁷³ (Mexico, Japan and Chad) and five more submitted the report with delay (Germany, Lebanon, Italy and Switzerland).¹⁷⁴ Between the first countries to submit, only Japan had taken some positive steps towards the inclusion of the recommendation in the national system. Not to mention the little interest shown by Member States in the implementation of the recommendation, this same reaction was stressed by Marc Denhez in 1997 *Pre-evaluation of the 1989 UNESCO Recommendation on the Safeguarding of Traditional Culture and Folklore*. Other reflections were done by the same Denhez in the Phuket WIPO-UNESCO document edited in 1997, such as the failure to apply a mandate to UNESCO and the lack of suggestions on the implementation methods provided to Member States. These two issues represent the most important shortcomings inside the document. In addition, it has been already outlined how the recommendation mostly addresses researchers rather than performers and transmitters, also moving their consent to the background, and the exclusion of contemporary and urban cultural expressions from the protection, as well as of traditional knowledge.¹⁷⁵

A second questionnaire was prepared in 1994, this time the response was positive. 103 Member States replied to the questions and more than a half were aware of the existence of the recommendation (58%), an alarming trend that should nonetheless be revised in light of the previous questionnaire. The results were collected and analysed by Richard Kurin in *The UNESCO Questionnaire on the Application of the 1989 Recommendation*. The data highlighted a relevant inadequacy of the existing laws and measures taken by countries to apply the recommendation, and to identify, disseminate and preserve folklore.¹⁷⁶

2.1.3. Marrakech Meeting - 1997

As the drafting process of the 1989 Recommendation was launched by an international concern about the intellectual property rights of folklore expressions; the Marrakech Meeting (organised on June 27-28, 1997) could be considered the second step towards the implementation of international protection of intangible cultural heritage,¹⁷⁷ this time urged by writer Juan Goytisolo's petition to Federico Mayor, who was Director General of UNESCO at that time. Once again, an external appeal made its way to the international organization and shed light on the urgency of taking action in order to safeguard traditional popular culture.

¹⁷³ Document 26 C/29.

¹⁷⁴ See Janet Blake, "Developing a New Standard-Setting Instrument," 39.

¹⁷⁵ For more information consult: Janet Blake, *Developing a New Standard-Setting instrument*, 38-39; Anthony McCann, "The 1989 Recommendation Ten Years On."

¹⁷⁶ See Richard Kurin, "The UNESCO Questionnaire on the Application of the 1989 Recommendation," in edited by Peter Seitel, *Safeguarding Traditional Cultures*, 20-33.

¹⁷⁷ Indeed, it will give rise to the Proclamation of the Masterpieces Project.

In 1996, the Spanish writer informed the Director General of UNESCO about the risk which the Jemaa el Fna Square was facing. This is one of the world's most inspiring places where various folk traditions mix, transforming this simple space into a lively and changing stage and the distinction between actors, mostly storytellers, and the audience slowly fades. The issue which led to Goytisolo's request for UNESCO's intervention was the reallocation of the square's land, in favour of a "modern urbanisation of the city"¹⁷⁸ decided by the municipality.

The international reaction to the plea was positive and the Marrakech Meeting was organized in 1997. It was a small-scale meeting where eleven international and five Moroccan experts participated, but its impact was considerable:

- It fostered the development of additional policies for the safeguarding of intangible cultural heritage. First of all, it launched the Proclamation of the Masterpieces of the Oral and Intangible Heritage of Humanity Program;¹⁷⁹ moreover, during the event, UNESCO's former Assistant Director-General for the Bureau of Programme Planning announced the preparation of an international convention;¹⁸⁰
- it emphasized the importance of transmission rather than safeguarding and protection.

The International Consultation on the Preservation of Popular Cultural Space, another name for the Marrakech Meeting, clearly states the goal of the convocation: the preservation of popular cultural spaces from commodification and disappearance. The definition "cultural landscape" was a new integration¹⁸¹ made in 1992 by the World Heritage Committee. The increasing frustration expressed by non-western countries for the imbalance represented in the World Heritage List encouraged the committee to take action in order to broaden the types of categories in the listing process. Thus, in 1992 the class "cultural landscape" was added. For the first time a new category contained mixed connotations, which could have included cultural traditions as well.¹⁸² The more ephemeral characteristics of cultural heritage were slowly emerging.

¹⁷⁸ See Noriko Aikawa-Faure, "From the Proclamation of Masterpiece," 16.

¹⁷⁹ The program was first suggested by the research and proposal made by lawyer Marc Denhez. Then in October 1997, a new motion for the project was submitted, "Proclamation of Masterpieces of Oral Heritage of Humanity" by Morocco and Guinea (with the support of Cape Verde, Dominican Republic, Lebanon, Mali, Portugal, Saudi Arabia, Spain, UAE, Uzbekistan, and Venezuela.)

¹⁸⁰ Albert Sasson, sent to the Marrakech Meeting on the behalf of Federico Mayor, declared: "UNESCO could begin preparing an international Convention specifically for ICH to promote its protection (with a global approach)", from Noriko Aikawa-Faure, "From the Proclamation of Masterpieces," 15-16.

¹⁸¹ Nonetheless, despite being considered a new category, the existing literature showed well-known reflections on the meaning of cultural landscape even before 1992, as shown in Robert Z. Melnick, *Cultural Landscapes: Rural Historic Districts in the National Park System* (USA: Natl Technical Information, 1984). Or by the leading volume co-authored by various experts and published in 1989 Hilary H. Birks, H.J.B. Birks, Peter Emil Kaland and Dagfinn Moe, *The Cultural Landscape: Past, Present and Future* (Cambridge: Cambridge University Press, 2004). The decade spanning from 1982 to 1992 was essential for UNESCO to establish this conceptual definition, starting from the concept of rural landscapes and in the wake of a more influential and informed participation.

¹⁸² The World Heritage Centre's *Operational Guidelines* make a list of the criteria considered for the inscription of a cultural heritage under the category of cultural landscape. The introduction of popular cultures, traditions and expressions is well represented by the third criterion, which states: "a unique or at least exceptional testimony to a cultural tradition or civilization, living or disappeared," and by the last one, that underlines the association with "event or living traditions, with ideas, or with

Particularly noteworthy are two more events, which became relevant in those years: firstly, the Rio Earth Summit (1997),¹⁸³ and secondly, the report *Our Creative Diversity*.¹⁸⁴ Especially this last one pointed out the innovative passage from the international attention on “environment and development” to “culture and development,” with the appointment given to a new established World Commission on Culture and Development (1992), which included both men and women with different backgrounds and countries of origin. The final report drafted by Javier Pérez de Cuéllar shows the several multidisciplinary¹⁸⁵ influences which should be evaluated when analysing culture in connection with development, the latter considered as a means of both economic growth and social progress.¹⁸⁶

Back to the 1997 meeting, lawyer Marc Denhez¹⁸⁷ was appointed by UNESCO to establish various international possibilities in order to protect cultural spaces at threat. He identified the creation of an award system as one of the best awareness-raising measures, which was inspired by the Sultan Quaboos Prize for Environmental Preservation, the UNESCO Prize for Peace and Education, the Aga Khan Award for Architecture and the Félix Houphouët-Boigny Peace Prize, and with an eye towards the Getty Foundation’s organisational criteria and the Living Human Treasures System proposed by the government of the Republic of Korea in 1993. Speed, high social impact, and flexibility are the three main positive factors which Denhez¹⁸⁸ underlined, in favour of such a project. This provided a solid foundation for the upcoming “Masterpieces Program of the Oral and Intangible Heritage;” on the other hand, attention was detracted from the need of a more binding international document, like a new convention.

He proposed several guidelines, which were comprehensive of the measures already adopted by the 1989 Recommendation. In addition, he put the participation of communities and, individuals and bearers in the foreground, which had been excluded from the previous document. By enlarging the group of stakeholders, no longer limited to researchers and scholars, Denhez implemented both the recommendation and the living human treasures system. As a matter of fact, the first lacked in its academic approach focused on conservation; the latter was limited to some expressions of the intangible cultural heritage, omitting

beliefs (...).” For a comprehensive analysis of the criteria see Peter J. Fowler, “Analysis of World Heritage Cultural Landscape 1992-2002,” *World Heritage Papers* 6, (2003): 28-34.

¹⁸³ The Rio Earth Summit is part of the United Nations Conference on Environment and Development (UNCED), which took place in Rio de Janeiro on June 3-14, 1992. 105 countries participated with the principal aim of discussing themes related to environmental issues. After the conference, indigenous people’s knowledge was gradually being re-discussed and recognised, this helped to enhance future discussions on the topic at the international level.

¹⁸⁴ Javier Pérez de Cuéllar, *Our Creative Diversity, Report of the World Commission on Culture and Development* (Paris: UNESCO, 1995).

¹⁸⁵ The report analyses the ethics involved when considering culture and development, gender relationships, media involvement, young people and children’s participation, environmental issues, cultural policies, and mutual respect between cultures.

¹⁸⁶ For a more detailed study and explanation of the two meanings of the term development, see: Javier Pérez de Cuéllar, *Our Creative Diversity*, 22.

¹⁸⁷ Marc Denhez is a Canadian heritage lawyer and professor.

¹⁸⁸ “He (Denhez) argued that the ‘award system has a major impact on World consciousness and furthermore from the procedural standpoint the award system has the virtue of speed as well as of being more aptly tailored to the subject-matter’” from Noriko Aikawa-Faure, “From the Proclamation of Masterpieces,” 16.

others. Moreover, the 1972 Convention is always taken into account as the main background document to be implemented.¹⁸⁹ That being said, at the 1997 Marrakech meeting the Canadian lawyer presented his *System to Honour Cultural Space with Remarkable Intangible Heritage*, anticipating the Masterpieces Program and calling for more concrete action at the international level.

Jemaa El Fna's issue had also led to a growing awareness of the necessity of establishing an international convention. The call made by the Assistant Director-General Sasson in the opening speech of the 1997 meeting reminds all UNESCO Member States the alarming situation faced by ICH and the need to prepare an international convention.¹⁹⁰ This question would have been reintroduced during the Washington Conference, in 1999.

2.1.4. Washington Conference - 1999

The Washington Conference was organised by the Smithsonian Institution on June 27-30, 1999. It is taken into account as it represents the final comprehensive meeting of the eight regional seminars held by UNESCO, which took place between 1995 and 1999.¹⁹¹ 27 states attended the conference, that closed with several recommendations addressing both UNESCO and Member States.

Participants had the opportunity to consult the reports of the eight sub-regional seminars and re-discussed some of the main themes in groups. During the second day of the meeting, the attendants were divided into three different working groups, with the aim of considering three major topics:

- Intangible heritage in relation to tangible and natural ones, and to contemporary social changes and contemporary issues (gender inequalities, youth, globalisation, cultural differences coexistence, conflict prevention, new technologies, sustainable development, environment, cultural identity, etc.);
- Local ICH's legal protection;
- International policies concerning the transmission and the revitalization, as well as the documentation of ICH.

Discussions on the implementation of the 1989 Recommendation were at the centre of the event, some revisions were proposed: terminological inaccuracies were appraised and a comprehensive

¹⁸⁹ See Peter Seitel, *Safeguarding Traditional Cultures*, 263: "The General Conference proclaimed cultural spaces and forms of cultural expression as 'Masterpieces of the Oral and Intangible Heritage of Humanity.' This proclamation served as one of the means to compensate for the fact that the 1972 Convention does not apply to intangible cultural heritage."

¹⁹⁰ See note 180.

¹⁹¹ The eight seminars represented eight world sub-regions, respectively: Central and Eastern Europe (Czech Republic, 1995), Latin America and the Caribbean (Mexico, 1997), Asia (Japan, 1997), Western Europe (Finland, 1998), Central Asia and the Caucasus (Uzbekistan, 1998), Africa (Ghana, 1999), Pacific (New Caledonia, 1999), Arab States (Lebanon, 1999). The main topic discussed during the seminars was the application of the 1989 Recommendation by UNESCO Member States and implementation at the national level.

reassessment of the communities and transmitters' involvement in the safeguarding were encouraged; moreover, the revitalization became the main focus, calling for a detachment from the previous 1989 attention on conservation and collection of folk materials.

The three groups suggested some useful recommendations and perspectives in the analysis of the relationships between ICH and contemporary issues, policies and protection.

The first group reconsidered the strong inter-relationship between intangible, tangible and natural heritages. Thus, the elements considered in the 1972 Convention were enriched by a new factor, if we consider human creativity and cultural spaces and their role in communities' lifestyle and traditional costumes¹⁹² as justifying and enriching the cultural meaning attached to monuments and sites. Furthermore, ICH's various relationships with contemporary social, political, and economical topics¹⁹³ were introduced. It has been thoroughly underlined that ICH can sometimes represent an added value, and sometimes can take on a decisive role in contrasting or ameliorating some local or even global subjects, such as environment protection and globalisation. Community support by Member States and international organizations is fundamental in order to keep on transmitting and protecting the traditional know-hows. On this topic, Robyne Bancroft¹⁹⁴ presented the Australian Aboriginal critical situation, she urged for UNESCO and the Smithsonian Institute to intervene and asked for an international convention to remedy the shortcomings of the 1989 Recommendation.¹⁹⁵ On the other hand, a concrete example of organizations and nations' positive financial and active participation in safeguarding and supporting bearers was introduced at the conference by Mahaman Garba.¹⁹⁶ He cited the example of the Centre de Formation et de Promotion Musicale, which, through the joint efforts of the Nigerian government, UNESCO and the Japanese government have been researching, training and promoting Niger's regional musical traditions.¹⁹⁷

The "Legal Protection of Local and National Intangible Cultural Heritage" was the second theme debated by attendants of the second working group. Two recommendations were given, such as putting several cultural restrictions and developing special warranties and "silent" contracts, and establishing a

¹⁹² During the conference, the first group introduced case studies about the connection between tangible and intangible heritage: Jemaa El Fna Square, Bolivia Coca Plant.

¹⁹³ As mentioned above, the relationships considered during the group I discussions were the dialogue between ICH and group identity, gender, sustainable development, globalisation, technologies, ethnic conflicts, and environmental protection.

¹⁹⁴ She is an Australian Aboriginal artist and activist. She has been working as an Indigenous Heritage Consultant and is the founder of the Indigenous Archaeological Association (IAA).

¹⁹⁵ For Robyne Bancroft's complete presentation check: "Everything Relates, or a Holistic Approach to Aboriginal Indigenous Cultural Heritage" in Peter Seitel, *Safeguarding Traditional Cultures*, 70-74.

¹⁹⁶ Mahaman Garba is a Nigerian ethnomusicologist at the Niamey Centre de Formation et de Promotion Musicale (CFPM).

¹⁹⁷ Mahaman Garba, "Aspects dynamiques des cultures sonores: transformation du métier du griot au Niger sous l'influence du modernisme" in Peter Seitel, *Safeguarding Traditional Cultures*, 194-202.

body of traditional bearers in place of the members' government. Furthermore, five main areas were identified:

- Conceptual framework: terminology, authorship and commodification;
- Legal provisions and mechanisms: legal basis at all levels and division of legal issues in two orders, the maintenance and revitalization of culture and the appropriation of knowledge;
- Extra-legal sanctions and customary law: community and non-legalistic solutions;
- Rights-issues: authorship, plagiarism and copyright;
- Public domain: privacy and secrecy.

The third group's work was summarized into nine points concerning policies at all levels (local, regional and international). Particular attention was given to the subjects of transmission, revitalization and documentation. Several international examples based on the above mentioned subjects were showed, such as: the Bahamas' archives, the museum and on-coming copyright act;¹⁹⁸ the African archiving system coordinated at the regional, national and local level,¹⁹⁹ or even the last presentation made by Juana Nuñez, which showed Cuba's system to protect traditional culture through education, participatory involvement and elevation in the social status of important stakeholders on a cultural level.

A final analysis of the three working groups underlined the inappropriate terminology used in UNESCO documents, and the strong relationship between tangible and intangible heritages. Regarding this, some actions were suggested in order to enhance the inclusion of communities and transmitters, for instance: legal and administrative instruments in order to protect bearers' communities, communication improvement at all levels, inclusion of traditional groups in the decision-making, and consideration of the transnational nature of some forms of ICH. Protection of bearers and granting financial support also mean enhancing the transmission of cultural traditions held by individuals or communities.

The conference's final report addressed to both UNESCO and Member States suggested several recommendations to be considered in order to keep on working for the protection and revitalization of ICH. The main suggestions to UNESCO were: cooperation, organization assistance to Member States and establishment of a Code of Ethics as well as collaboration with WIPO. National governments should encourage and support: transmission through economic, social and cultural aids and activities for bearers and communities, proper inclusion and development of a more varied educational curriculum, and adoption of an appropriate legal regime. The most important point is probably represented by recommendation n.12, addressed to Member States, which states: "consider, if they so desire, the possible submission of a draft resolution to the UNESCO General Conference requesting UNESCO to undertake a study on the feasibility

¹⁹⁸ See Geil Saunders, "Preserving Bahamian Heritage" in Peter Seitel, *Safeguarding Traditional Cultures*, 190-193.

¹⁹⁹ See Renato Matusse, "The SADC Databank: The Role of Data Exchange in Empowering Local Institutions" in Peter Seitel, *Safeguarding Traditional Cultures*, 185-189.

of adopting a new normative instrument on the safeguarding of traditional culture and folklore.”²⁰⁰ This statement will be followed in November 1999 by the request²⁰¹ of a preliminary study for a new UNESCO instrument safeguarding ICH, opening a new section in the history of legal provisions for the protection of folklore and traditional cultures.

2.1.5. Proclamation of the Masterpieces of the Oral and Intangible Heritage of Humanity (UNESCO - 2001)

The Proclamation of the Masterpieces of Oral and Intangible Heritage of Humanity represents the last step before the establishment of the 2003 Convention. The program was approved at the executive board’s 155th session in November 1998, and the first proclamation was held in 2001. The program’s historical background is rooted in the 1997 Marrakech Meeting. At that time, the question raised by the Spanish writer Juan Goytisolo had drawn the attention of UNESCO and its Member States to the urgent situation which intangible heritage, and especially oral expressions, were experiencing. The Canadian lawyer Marc Denhez, appointed beforehand, presented a proposal during the meeting: *System to Honour Cultural Space with Remarkable Intangible Heritage*. This document established the foundation for the following Proclamation of the Masterpieces Program. The resolution setting the establishment of the Masterpieces Program was adopted in 1997 by the General Conference’s 29th session,²⁰² and drafted during the Marrakech Meeting. As a result, the proposal passed to the executive board in 1998²⁰³ for approval. On one hand, the 2001 Program represents the natural evolution of a longer process, started in 1982, which was moving towards the implementation and amelioration of the 1972 World Heritage Convention, and of the 1989 Recommendation. On the other hand, it was internationally considered a faster, second-best document for the constitution of an instrument, similar to the legal mechanisms of the 1972 WHC²⁰⁴ for intangible heritage, which would have taken much more time.

²⁰⁰ Peter Seitel, *Safeguarding Traditional Cultures*, 304.

²⁰¹ Request submitted by the governments of Bolivia, Lithuania, and the Czech Republic; for more information see: Janet Blake, *Developing a New Standard-Setting Instrument*, 1.

²⁰² The subject discussed is reported in the *Records of the General Conference-Resolutions of the 29th Session* (Paris: UNESCO, 1998), 53.

²⁰³ 155 EX/Decisions, Paris, 3 December 1998.

²⁰⁴ Between 1996 and 1998, several objections made by non-Western countries sustained the possibility of making some additions to the 1972 Convention, or of drafting a new convention which should have included ICH. However, the long process and many difficulties, which were outlined in the establishment of such a convention, led to the choice of setting up a program, instead of presenting a convention. For more information see: Thomas M. Schmitt, “The UNESCO Concept of Safeguarding Intangible Cultural Heritage: Its Background and Marrakchi Roots,” *International Journal of Heritage Studies* 14, n.2, (2008): 95-111.

The first proclamation was issued in 2001, when nineteen elements entered into the program. Two more proclamations followed after the 2001 one, as stated in the 1998 approval: 2003 and 2005.²⁰⁵ The proclamation should have been conducted every two years,²⁰⁶ until the 2003 Convention's entry into force. On April 20, 2006, all the declared masterpieces were registered on the list of the intangible cultural heritage of humanity, in accordance with Article 31²⁰⁷ of the new international convention, and in line with the suggestions made during the Elche Jury Meeting in 2001.²⁰⁸

The Masterpieces Program included two different, but complementary types of heritage: firstly, the oral and intangible expressions, and secondly, the cultural spaces which acquire significance only related to cultural activities. For the first time, these two categories are finally included in the same document,²⁰⁹ coming out of the confined restrictions imposed by the fragmented international legal system. An undeniable example can be represented by the case of the Jemaa El Fna Square,²¹⁰ where the square is the panopticon from which the vitality of intangible expressions can be inferred.

The program text is divided into eight sections and a preamble, which reminds that the Proclamation is based on the 1989 Recommendation and the 1993 Living Human Treasures system.²¹¹ The eight chapters are entitled: 1) Objective; 2) Title; 3) Interval Between Proclamations; 4) Evaluation Procedure; 5) Submission of Candidates; 6) Criteria; 7) Monitoring and Follow-up; 8) Administration.

The first section introduces the objective of the international project, and states the definitions of both cultural spaces and "oral and intangible heritage", the latter based on the one in the 1989 document. The fifth point claims that financial assistance for the project would be provided by UNESCO, as well as

²⁰⁵ During the 2003 Proclamation, 28 masterpieces were chosen; in 2005, 43 elements completed the program, with a total of 90 items declared as masterpieces.

²⁰⁶ Art. 3.a of the 155 EX/Decisions states: "Masterpieces of the oral and intangible heritage of humanity will be proclaimed by the Director-General every two years, on the recommendation of a jury, at a public ceremony at UNESCO Headquarters in Paris, or any other location chosen by the Director-General."

²⁰⁷ Art. 31.1 of the 2003 ICHC states: "The Committee shall incorporate in the Representative List of the Intangible Cultural Heritage of Humanity the items proclaimed 'Masterpieces of the Oral and Intangible Heritage of Humanity' before the entry into force of this Convention."

²⁰⁸ During September 2001 in the above-mentioned meeting, experts convened that in order to harmonise and increase public awareness, the Masterpieces Program should have been included in the new convention, following the example of the lists in the 1972 WHC. For more information see, Ralph Regenvanu, *Priority Domains Selected for the Proclamation in the Field of Intangible Heritage and Suggestions for a Future International Convention - A Report on the Elche Meeting of the Proclamation Jury* (Paris: UNESCO, 2002).

²⁰⁹ As a matter of fact, it should be noted that intangible cultural heritage identified as folklore was already safeguarded through the 1989 Recommendation; on the other hand, cultural spaces were introduced in 1992 in the 1972 World Heritage Convention. Despite the division made by UNESCO, both of these heritages were already taken into consideration in the UNESCO documents, even before the Masterpieces Program.

²¹⁰ For an in-depth analysis on the importance and representativeness of the Moroccan square, as a useful example of a positive "panopticon" of oral, and intangible traditions, which embedded in the cultural space of the square, see: Thomas M. Schmitt, "The UNESCO Concept of Safeguarding Intangible Cultural Heritage," 95-111.

²¹¹ From UNESCO, 155 EX/Decisions, 1998, ¶3.5.5 (1): "Taking into account the provisions of the Recommendation on the Safeguarding of Traditional Culture and Folklore, adopted in 1989 by the General Conference's 25th session, and the Guide on Living Human Treasures."

“extra budgetary funds” will be sought out in order to sustain and assist item proclamations. It is a noteworthy change when comparing the 1989 Recommendation, in which no economic support was mentioned in the final text. With this new objective, UNESCO recognizes the economic difficulties encountered by many countries, which are rich in non-material heritage, but hold inadequate national funds. In addition, the issue related to the involvement of communities, raised by the previous 1989 Recommendation, is partially solved with the call made in point (b) where communities, groups and individuals (together with NGOs and governments) are encouraged to take action in the preservation and protection of ICH,²¹² an important commitment which stands out.

The fifth section, titled “Criteria,” lists all the important characteristics to consider when selecting a masterpiece. The first standard is represented by the demanding task of being an item of “outstanding value.” The meaning and the implication of this adjective raised many doubts, especially when compared to the future instrument, where the word “representative” is preferred over the first. The use of the above-mentioned criteria takes cognizance of the 1972 text, by applying the same feature of “outstanding value” to the intangible heritage. Moreover, some experts consider this word in contradiction with the coexistence of the following feature: “risk of disappearance.”²¹³ The masterpieces should also be an expression of community cultural identity and shall foster social cohesion through “intercultural exchange” of knowledge. This intends that the group of transmitters remains open to new cultural connections and to outsiders. The first group of requirements greatly recognizes the importance of the criteria delineated in 1993 by the Living Human Treasure System. Indeed, four²¹⁴ criteria out of the eight, are taken from the ones used by the Korean system; thus, the conditions set in the preamble are clearly abided.

The second group of required criteria concern the plans and projects proposed by the local governments and NGOs in order to sustain the selected masterpieces through legal protection, cultural projects, social inclusion, people and bearers’ engagement, and revitalization both by practice and preservation of knowledge (archiving, recording, etc.). Revitalization is a fundamental trait in order to keep a tradition alive and enhance its transmittance. For this reason, the measures taken should include

²¹² See Art. 1.b. of the Proclamation, in 155 EX/Decisions.

²¹³ See Peter J.M. Nas, “Masterpieces of Oral and Intangible Culture: Reflections on the UNESCO World Heritage List,” *Current Anthropology* 43, n. 1 (February 2002): 143.

²¹⁴ Respectively, from the 1993 Guidelines for the Establishment of National “Living Human Treasures” Systems, the criteria listed in chapter 4 “Selection Criteria”, and similar to the ones in the Proclamation of Masterpieces, are: “- Its value as a testimony of human creative genius; - its roots in cultural and social traditions; - its representative character for a given community or group; - the risk of its disappearing.” As it concerns the 1998 Proclamation of the Masterpieces, the following criteria clearly recalls the previous project: “- its outstanding value as a masterpiece of the human creative genius; - its roots in the cultural tradition or cultural history of the community concerned; - its role as a means of affirming the cultural identity of the peoples and cultural communities concerned (...); - the risk of its disappearing (...).”

community involvement in the preservation and promotion activities, and the bearers, who shall develop “the relevant skills” and bequeath future generations traditional knowledge and practices.

The selection is demanding and rich of information and characteristics, which need to be fulfilled²¹⁵ to such a degree that it implies even more rigorous work in order to satisfy them all. The “Monitoring and Follow-Up” chapter consists of a statement, which shall probably be read as a duty to be accomplished in order to keep UNESCO up-to-date on the projects and results achieved. The distance taken from the 1989 Recommendation is clear, as its lack in binding force was often claimed together with its limited control over commitments. The sentence: “the winner shall therefore make a firm commitment” is a strong and clear statement of the duties and responsibilities of each Member State, not only with respect to present actions but also to future ones.

The increasing number of masterpieces registered from 2001 to 2005 may be read as the growing interest in the promotion of this type of cultural heritage, once confined to no Western countries.²¹⁶ In November 2005, the Director-General praised the project as one of the best practices for the identification of intangible cultural heritage, as well as one of the best examples for ICH planning and methodology.²¹⁷ The 2003 Convention could draw from the project’s practice and attempt to ameliorate and develop new and better action plans.

At this stage, however, a division should be pointed out. Experts were divided between two positions:²¹⁸ the first being the critic arising from the Smithsonian Institute members,²¹⁹ who considered the proclamation as another nationalistic affirmation distant from the communities and bearers’ realities, on the other hand, the positive outputs of the program had been outspoken, especially for case’s specific adaptability and holistic approach.²²⁰

All the registered masterpieces passed to the Representative List of Intangible Cultural Heritage in 2006, prior to the Member State ratification of the new convention. As of today, all 90 elements of the proclamation have been included on the list, none of them were excluded or recalled.

²¹⁵ Even though the text only states 12 criteria to be reached, the checklist listed 49 criteria, which needed to be taken into account by the juries and institutions responsible. On this topic see: Seong-Yong Park, *On Intangible Heritage Safeguarding Governance - An Asia-Pacific Context* (Cambridge: Cambridge Scholars Publishing, 2013), 77-78.

²¹⁶ This same opinion has been expressed by Seong-Yong Park in: Seong-Yong Park, *On Intangible Heritage Safeguarding Governance*, 77.

²¹⁷ For the Director-General’s speech see: Seong-Yong Park, *On Intangible Heritage Safeguarding*, 76.

²¹⁸ For a thorough analysis of the perspective, see: Lauso Zagato, “La Convenzione sulla protezione del patrimonio culturale intangibile,” 52-53; Barbara Kirshenblatt-Gimblett, “Intangible Heritage as a Metacultural Production,” *Museum International*, n. 261-264 (2004): 163-174.

²¹⁹ James Early and Peter Seitel, “Unesco Meeting in Rio. Steps Toward a Convention,” in *Smithsonian Talk Story*, n. 16 (2002): 13.

²²⁰ This position was supported by Lourdes Arizpe in Lourdes Arizpe, “Intangible Cultural Heritage. Diversity and Coherence,” in *Museum International*, n. 221-222 (June 2004): 130-135.

2.1.6. Towards the 2003 Convention: Turin, Elche and Rio Meetings

Between the adoption of the 2001 Proclamation of the Masterpieces of the Oral and Intangible Heritage and the 2003 Intangible Cultural Heritage Convention, UNESCO convened three expert meetings in order to clarify and dive into the terminological and administrative issues. Starting from the 2001 Turin meeting, the discussions related to program accommodations and clarifications proceeded alongside the setting of a new international instrument, and the 2001 Universal Declaration on Cultural Diversity (UNESCO) was finally associated with the protection of intangible heritage during the Rio meeting. For this reason, these three documents (Masterpieces Program, ICHC, and Declaration on Cultural Diversity) are sometimes considered as an indivisible set of instruments.

The Turin, Elche and Rio meetings not only represent the development of some practical tools (terminological, administrative and normative) to be applied to the ICHC, but also the process in the awareness raise of a group of States Parties, whose opposition has been persistent over the establishment of an international convention.

Turin Roundtable:

The Turin meeting was called by UNESCO and held between March 14-17, 2001. This International Roundtable²²¹ was hosted by the Italian government in the city of Turin and gathered various experts in order to discuss the request made by the governments of Bolivia, Lithuania and Czech Republic for the establishment of an international convention safeguarding ICH.²²² The meeting chronologically follows the General Conference draft resolution,²²³ where the governing body authorised the beginning of the new convention's preparation. In light of the drafting of a new international instrument and of the approval of the Masterpieces Program, this meeting agrees on the terminology and definitions to be employed, as well as the scope to be pursued by the new convention.

The topics discussed during the meeting can be summarized as follows:

- terminology in use based on a questionnaire conducted in 2000 by UNESCO;
- terminology in the field of ICH;
- a new international instrument working set of indicators (by Janet Blake);
- a suitable working definition for UNESCO and ICH evaluation methods.

²²¹ Officially entitled: "Intangible Cultural Heritage - Working Definitions."

²²² See UNESCO 30C/DR.84.

²²³ The 30th Session of the General Conference in October 1999.

Inferred by the above-mentioned subjects, the Turin meeting helped to collect relevant information on the terminology used by Member States and the legal protection used and in regard to ICH. The meeting was arranged by subjects, each day one or more experts participated focusing on the various topics.

During the first day of the meeting, Lourdes Arizpe and Manuela Carneiro da Cunha²²⁴ intervened. The first singled out WIPO and WTO, by stressing the reasons²²⁵ why UNESCO should protect ICH, which will also be stated in the final report. The question about domains and expressions to be protected will characterize the following meetings and discussions. Arizpe suggests a wide range of cultural expressions, which should be included in the new instrument, divided into nine different subsets: life, social, biodiversity, symbolic, spiritual, literary, performing arts, and festivities. She also underlines the economic value as one of the elements involved in ICH's creative process. Thus, the more commercial aspect of ICH is not defined as something to reject, but as an element, which should be taken into consideration in order to identify and understand the genesis of cultural expressions.²²⁶

The importance of the living nature of ICH, or better traditional knowledge, is stressed by da Cunha, who cites both the Convention on Biological Diversity and the 2000 WIPO draft.²²⁷ Traditions are recognized as living and contemporary. Thus, transmission is one of the fundamental mechanics in the preservation of ICH. National identity and cultural differences are here introduced not in contrast or contradiction, but rather in harmony, as the Mexican government stated to UNESCO,²²⁸ and by the European Conference of Ministers²²⁹ (May 30-31, 1996). Culture can assume significance both through the sharing and recognition of the same cultural model by a group or community of people²³⁰ through an internal comparison, and on the other hand, through an external dimension, where one cultural identity is defined through the contrast with other cultures.

²²⁴ See footnotes 92 and 93.

²²⁵ The six reasons are: "1. to conserve human creations that may disappear forever; 2. to give world recognition; 3. to strengthen identity; 4. to enable social cooperation; 5. to provide historical continuity; 6. to foster enjoyment," in Lourdes Arizpe, *Intangible Cultural Heritage - Perceptions and Enactments* (Paris: UNESCO, 2001).

²²⁶ This view will be stated in the final report, where the issue thoroughly discussed during the meeting of whether or not to include the *product* as an element of ICH, will be solved by encompassing the "anthropological concepts about product, production and process," in Noriko Aikawa-Faure, "From the Proclamation of Masterpieces," 26.

²²⁷ *WIPO Fact-Finding Missions on Intellectual Property and Traditional Knowledge*.

²²⁸ "There is no national culture without taking into account the real cultural heritage from a nation, e.g. the sum of heritages of all its communities, peoples and social groups, a heritage where popular culture is of particular salience" Mexico's reply to UNESCO, from Manuela Carneiro da Cunha, *Notions of Intangible Cultural Heritage: Towards a UNESCO Working Definition* (Paris: UNESCO, 2001), 6. Presented on the occasion of the March 2001, Turin Roundtable.

²²⁹ On May 30-31, 1996, during the VI European Conference of Ministers about cultural heritage held in Helsinki, European cultural identity and diversity were defined as a "common cultural heritage" in its scope to preserve the national, regional, or even local cultural expressions of diversity. As well as, spread awareness of the risks that all European countries could jeopardize the Union's same foundations, by denying the differences inside singular nations, considering the Union as a standardisation of cultures.

²³⁰ For more information on culture as sharing from an anthropological perspective, see Carol R. Ember and Melvin Ember, *Cultural Anthropology* (Bologna: Il Mulino, 1998), 31.

In the second part of the speech, da Cunha investigates the proper terminology to be adopted when referring to ICH. She analyses the use of the terms: traditional knowledge, folklore and expressions of folklore in the WIPO's usage, and cites the WIPO subdivision of the intellectual property of indigenous peoples into three categories,²³¹ implemented by Professor Erica-Irene A. Daes.²³² Da Cunha used this subdivision in order to clarify the varied nature of ICH and to provide some definitions.

These two speeches stressed the strong intention in adopting a more holistic view, in order to protect this type of heritage. However, Arizpe's limited scope of domains was in contrast with the larger scope proposed by da Cunha, which could overlap with other organisations' works.²³³

The second day of the meeting was dedicated to ICH terminology. Peter Seitel focused on the operational²³⁴ definitions in the field of ICH. He stressed how the terminology should be a common point between UNESCO and WIPO, and that both IGOs should address the same set of terms in order to facilitate their cooperative work in the field. He set the rules to establish a framework, which should take into account: context, conventional match between signifier and signified, and cohesive and coherent system of word association. He also suggested the substitution of "folklore" and "intangible cultural heritage" with the word "traditional cultures", stressing the plural form of the latter.

As for the recommendation on working vocabulary, two different perspectives should be considered: one on the policy-making process and the other on the enactment of institution programs.

Another subject, on which he gave his view, is the one concerned with community involvement, which should be active in protection, safeguard and community engagement. Protecting and safeguarding should be fostered by WIPO and rounded out by UNESCO, community members, folklorists and experts. The process of protecting and safeguarding should be put in the foreground, with active participation of transmitters and experts in policy development.

Together with the critiques made about the academic and expert-driven 1989 Recommendation, and its strong control given to central authorities over cultural diversity through the Masterpieces Program, Peter Seitel reaffirms his idea of the limited role of a UNESCO directorate, which is mostly used by experts and cultural professionals rather than for bearers and communities. Thus, he suggests two moves:

²³¹ The three groups are: folklore and crafts, biodiversity, and indigenous knowledge. From the *WIPO Roundtable on Intellectual Property and Indigenous Peoples*, WIPO/INDIP/RT/98.

²³² She worked for almost 20 years in the United Nations in the Working Group on Indigenous Populations.

²³³ For more details see Noriko Aikawa-Faure, "From the Proclamation," 25.

²³⁴ He states that there are several kinds of definitions: descriptive, stipulative, and operational.

- establishment of a code of ethics;²³⁵
- engagement through community mutual relationships, and internet as a useful tool (establishment of international archives, sharing programs and experiences, distance learning, agencies engagement for various projects related with traditional cultures.)

During the third day of the meeting, Professor Janet Blake presented: *Preliminary Study on the Advisability of Developing a New Standard-Setting Instrument for the Safeguarding of Intangible Cultural Heritage*.²³⁶ The text is a comprehensive study on the advisability to create an international convention for ICH and she investigates: main terminological issues, IPRs related problems and background, the 1989 Recommendation, and characteristics of traditional knowledge both from a linguistic point of view and from its IPRs related characteristics.

The final conclusions give important suggestions and delineate the objectives of the new instrument, together with the obligations for State Parties. Blake considers UNESCO the best organisation, which can provide assistance and take into consideration the protection of ICH worldwide.

Some difficulties are outlined:

- Delineating terms;
- Legal mechanisms for protection;
- Eliminate any potential conflicts of interest;
- Challenging established legal principles;
- Problems between State Parties and minorities should not be addressed by the instrument;
- The freedom of practice does not have to be against human rights;
- Avoid: artificial removal of heritage from its context, disseminating secret knowledge, creating inappropriate hierarchies, fossilisation of living cultures.

She lists the objectives²³⁷ of the new instrument in three subsets, respectively: existing but need restating; those strengthened by the instrument; those which require an instrument to be achieved, the most considerable group of suggestions, which also includes the involvement of “tradition-holders in the preservation, planning and management of intangible heritage,” and their protection.²³⁸

²³⁵ This element in particular will be developed starting from 2012, until its final endorsement in 2015, by the committee at its tenth session. The twelve ethical principles can be consulted at the following link: “Background of the ethical principles for safeguarding Intangible Cultural Heritage,” ICH UNESCO, accessed June 19, 2018, <https://ich.unesco.org/en/background-of-the-ethical-principles-00867>.

²³⁶ In accordance with the Resolution 25 B. 2. (a) (iii) adopted by the UNESCO General Conference at its 30th session (November 1999).

²³⁷ The objectives consist of the collection of the main suggestions made during the working period and through the regional seminars and consultations.

²³⁸ Janet Blake, *Preliminary Study on the Advisability*, 81.

The study will then pass on to the 31st session of the General Conference, as stated in document 161 EX/Decision 3.4.4 (Annex II, 31 C/43).²³⁹

Professor Francesco Francioni²⁴⁰ reported on legal protection at the international level, and the obstacles and meanings, which have to be considered with immaterial properties. Three fundamental points have been outlined: 1. The holder's interest to protect immaterial property from economic utilisation; 2. Recognition by law of such interests as worthy of protection; 3. Regulations by law concerning different aspects of ICH. However, several limitations have been signaled, as well: ICH is more in process rather than a final product which, on the other hand, is the main goal of IPRs protection. Moreover, the creation process is hardly traceable for some traditional culture expressions, thus posing another issue in the protection system of legal rights. There might not be a single owner and it might even be impossible to find one since ICH is transmitted from generation to generation; property is held by communities and groups involved. Collectiveness represents another obstacle in the well-established framework of intellectual legal rights. Generally, a shift in the approach should be achieved with a gradual adaptation of international law to suit ICH needs and characteristics.²⁴¹

In addition, Francioni dealt with the problem of setting new working definitions. He lists a set of international normative instruments, that can be considered valuable for delineating some criteria for the definition of ICH in the new normative instrument. A list of five criteria has been chosen to include in the final term, respectively: 1. the concept of significance for communities of creators and transmitters and their identity; 2. ICH disappearance connected with the impoverishment of human heritage, thus its universal importance;²⁴² 3. pointing out typologies, besides a general and inclusive term; 4. establishing a collegial definition between UNESCO and other organizations engaged in the safeguarding; 5. the definition shall express the "intrinsic cultural values" as perceived by the communities involved.²⁴³

The meeting ended with several suggestions, which had emerged during the four days of conferences. In addition to the recommendations already mentioned, the final report stresses the importance

²³⁹ See UNESCO, 161 EX/14.15, ¶3.4.4, and Noriko Aikawa-Faure, *From the Proclamation of Masterpieces*, 32.

²⁴⁰ Francesco Francioni: Tenured professor, chair of International Law at the University of Siena, and emeritus professor at EUI.

²⁴¹ "In light of the above, a major concern in defining the UNESCO's approach to protecting intangible heritage should be the adaptation of the international protection model to the specificity of the intangible cultural heritage, and not the other way around, *i.e.* the adaptation of intangible cultural heritage to the pre-established model of intellectual property rights." Francesco Francioni, *Intangible Cultural Heritage - Working Definitions*, (Paris: UNESCO, 2001), 2. During the Turin International Round Table.

²⁴² In contrast with the idea expressed by Janet Blake, who considers that ICH should not be defined as "common or universal heritage of humanity", on the contrary, its protection should be considered as "universal interest."

²⁴³ These five elements are taken from: Francesco Francioni, *Intangible Cultural Heritage*.

of bearers and the maintenance of the vitality and living character of cultural expressions.²⁴⁴ The definition of ICH was settled,²⁴⁵ inspired to the suggestion made by F. Francioni,²⁴⁶ as well as the main domains of interest.²⁴⁷ The study conducted helped the experts underline some important objectives to be pursued in the new document, such as: conservation, recognition, cultural identity enhancement, support cooperation at different levels, transmission from/to generations, and “foster enjoyment.”²⁴⁸

The Turin Meeting can be considered the first comprehensive study of the new international instrument’s draft resolution for ICH. It fostered further research in the field in order to provide the best elements needed for the following convention. It enlarged the domains to be considered under the generic term ICH and defined the areas under six categories;²⁴⁹ moreover, it provided a new definition to be used for the meetings onwards, until the final definition was drafted.

Elche Jury Meeting:

An extraordinary jury meeting took place in Elche (Spain), was held on September 21-23, 2001. After the first Proclamation of the Masterpieces was conducted,²⁵⁰ the board members²⁵¹ decided on the need to convene a meeting in order to discuss the details regarding the conceptual aspect of ICH’s terminology and definition, in accordance with both the program and the future convention.

The meeting focused especially on the proclamation, selection criteria and procedures for the candidatures,²⁵² and based most of its considerations on the Turin meeting. The outcomes outlined will be considered for the future convention as well, respectively:

- the endorsement of the Turin definition;²⁵³

²⁴⁴ For more details see: Noriko Aikawa-Faure, *From the Proclamation*, 30-32.

²⁴⁵ UNESCO, 2001, Document 31 C/43.

²⁴⁶ See Francesco Francioni, *Intangible Cultural Heritage - Working Definitions* (Paris: UNESCO International round table, 2001), p. 5.

²⁴⁷ The domains include: “oral cultural heritage, languages, performing arts and festive events, social rituals and practices, cosmologies and knowledge systems, beliefs and practices about Nature”, see Noriko Aikawa-Faure, *From the Proclamation*, 32, and UNESCO, 161 EX/15, Chapter V, letter B, point 27.

²⁴⁸ See UNESCO, 2001, Document 31 C/43.

²⁴⁹ See footnote 183.

²⁵⁰ On May 15-18, 2001 (Paris), 19 masterpieces were proclaimed.

²⁵¹ In Document 161 EX/14, ¶3.4.3 (8), the executive board suggests the Director-General to “carry out a study” on the Masterpieces Program in order to clarify some “administrative and financial procedures.” In response, the Director General, in his introduction to the debate on item (162 EX/INF.9) at the executive board’s 162nd session, introduced the on-going presentation of more specific criteria for the selection of the Masterpieces to be released and provided to members in light of the following proclamation in 2003.

²⁵² See Ralph Regenvanu, *Priority Domains Selected for the Proclamation in the Field of Intangible Heritage and Suggestions for a Future International Convention (A report on the Elche meeting by the proclamation jury)* (Paris: UNESCO, 2002).

²⁵³ The definition states: “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,” from UNESCO, RIO /ITH/2002/INF/6, p.4.

- no prioritising of domains;
- the exclusion of language as a cultural expression;
- orality as the defining feature of cultural expressions;
- consistency with the ideals of UNESCO;
- the incorporation of the proclamation program in the future convention.

The non-hierarchical system of selection is an important element to be considered, which takes inspiration from Asian countries, where ICH has been considered part of the national heritage since the Fifties. Most importantly, communities and practitioners, rather than international organizations institutional domains, and criteria,²⁵⁴ should express the value of a specific culture. For instance, the assignment of ICH identification to communities and groups involved is underlined. This represents an important shift from a top-down to a bottom-up selection, which is more socially inclusive and in line with the politics of engagement and revitalization endorsed by many experts and UNESCO.

Rio Meeting:

The meeting entitled: “Intangible Cultural Heritage: Priority Domains for an International Convention” was held in Rio de Janeiro (Brazil), from January 22-24, 2002. It was convened by the UNESCO Director-General in light of the 31st General Conference and after the decision to draft an international convention on ICH was taken. It gathered twenty experts from different fields, with hope that the presence of some members of the Executive Board²⁵⁵ would have brought some positive effects on those members, who were sceptical about the development of an international convention on intangible heritage.

For the first time, the “political link”²⁵⁶ between ICH and cultural diversity was established, thus a new consensus was reached between some of the countries previously against an international convention on ICH.²⁵⁷ The results and decisions made during the Turin and Elche Meetings regarding the terminology and the definition of ICH, as well as the issue of the domains were all taken for granted by the experts. The specialists stressed that UNESCO should not repeat other IGOs work, on the contrary, the UN agency should have only filled the gaps left in the field of culture. Moreover, during the meeting some states presented their national experiences, bringing some useful examples to be used by other parties²⁵⁸ and data

²⁵⁴ See Ralph Regenvanu, *Priority Domains Selected*.

²⁵⁵ With particular reference to the Director-General’s opening speech, where Koichiro Matsuura explicitly addressed his wish to Madame Bennani (Chairperson of the Executive Board). For the reference see: UNESCO, DG/2002/03, and Noriko Aikawa-Faure, *From the Proclamation*, 34.

²⁵⁶ See Noriko Aikawa-Faure, *From the Proclamation*, 35.

²⁵⁷ It will be followed by the UNESCO, Istanbul Declaration, 2002.

²⁵⁸ Brazil, Dominican Republic, Uzbekistan, Morocco, Philippines and Guinea.

regarding the impact of the Masterpieces Program, giving useful insight and stressing the positive outcomes.²⁵⁹

The Masterpieces Program has been cited and taken into consideration, fundamental for its criteria, but also for the reaffirmation of UNESCO's commitment to the establishment of a more comprehensive instrument for the protection of the intangible heritage, a point strongly stressed by the Smithsonian Institute's director.²⁶⁰

2.1.7. Intangible Cultural Heritage Convention (UNESCO - 2003)

After the 31/C Resolution 30 was deemed, the Convention on the Safeguarding of Intangible Cultural Heritage (ICHC) was adopted on October 17, 2003 and it entered into force on April 20, 2006. The international instrument was especially voted to safeguard, ensure respect, raise awareness, and "provide international cooperation and assistance"²⁶¹ for ICH. As of today,²⁶² 177 State Parties have adopted the text, even though most of the English-speaking countries have not yet signed it (United Kingdom, USA, Canada, Australia), as well as Russia.

Article 2 starts directly by defining ICHC, and lists a series of five domains, thoroughly explained in the first section of this chapter, respectively: oral traditions and expressions; performing arts; social practices, rituals and festive events; knowledge and practices concerning nature and the universe; traditional craftsmanship. A wide range of intangible, as well as tangible items, are included in these categories. In fact, ICHC does not only consider immaterial heritage, but also the material objects, which can be connected to the cultural expressions. The living character of the heritage is stressed in the definition. In addition, the text recalls the abiding rules set by international human rights instruments, which have to be respected in the selection process. Another interesting element included in the definition is the requirement of sustainable development.²⁶³ Thus, the theme of commodification and exploitation of knowledge from communities is subtly introduced.

Besides this first definition, the meaning of "safeguarding," as well as "States Parties" are provided. The first identified in the actions of: "identification, documentation, research, preservation, protection,

²⁵⁹ Madame Bennani and Karvelis reported on the impact survey. They underlined awareness raising in communities, the sense of pride generated by the program and the enhancement of communities' cultural identities. See UNESCO, RIO/ITH/2002/WD/7.

²⁶⁰ See James Early and Peter Seitel, "Unesco Meeting in Rio. Steps Toward a Convention," in *Smithsonian Talk Story*, n. 16, (2002):13.

²⁶¹ As stated in the Convention Article 1 "Purposes of the Convention." Janet Blake affirms that these four goals already stress the three levels considered by the convention, respectively: the local, the national, and the international ones. See: Janet Blake, "UNESCO 2003 Convention on Intangible Cultural Heritage - The Implications of Community Involvement in 'Safeguarding'" in Laurajne Smith et al., *Intangible Heritage* (London, New York: Routledge, 2009), 47.

²⁶² Accessed 22/02/2018.

²⁶³ A whole chapter of the Operational Guidelines is devoted to the safeguarding and sustainable development of ICH. See: UNESCO, *Operational Guidelines, 2016* (Paris: UNESCO, 2016), 64.

promotion, enhancement, transmission,” education, and revitalization. These actions are to be implemented by the State Parties,²⁶⁴ which are signatory states to the convention and where the instrument entered into force.²⁶⁵

Both the Preamble and Article 3 of the convention reminds the relationships between the convention and other international instruments, such as: the 1948 Universal Declaration on Human Rights; the 1966 International Covenant on Economic, Social and Cultural Rights; the 1966 International Covenant on Civil and Political Rights; the 1989 Recommendation on the Safeguarding of Traditional Culture and Folklore;²⁶⁶ the 2001 UNESCO Declaration on Cultural Diversity; the 2002 UNESCO Istanbul Declaration, the Masterpieces Program, and lastly, the 1972 WHC. The latter raised the main concerns in regard to priority issues during the application, especially for material/tangible objects connected to ICH. Nevertheless, the issue is not clearly addressed neither by the ICHC text, nor by the guidelines (2016);²⁶⁷ thus, leaving it to potential conflicts, in particular concerning accessibility (notably for communities of practitioners) and ownership issues. On the other hand, the IPRs are absent from the text with the exception of a rather fleeting sentence: “affecting the rights and obligations of State Parties deriving from any international instrument relating to intellectual property rights” (Art. 3 (b)). The rights concerned with the protection of ownership are left to WIPO. After all, the differentiation of the areas under the aegis of UNESCO and WIPO were previously stated during the working process of the 1989 Recommendation, and then reminded in the Preliminary Study for Setting a New Standard Instrument,²⁶⁸ where the UNESCO role is explicitly limited to “cultural perspective.” Another concern is raised related to rights and policy-making. Thus, abuse can be understood both through national, as well as, political activism perspectives.²⁶⁹

The second section of the convention is devoted to the establishment and presentation of the organs involved and their duties, respectively: State Parties’ General Assembly, the Intergovernmental Committee for the Safeguarding of Intangible Cultural Heritage, and the UNESCO Secretariat. Moreover, State Parties, NGOs, and private and public bodies²⁷⁰ are the main stakeholders of the convention, with the marginal role

²⁶⁴ See Article 11 (a), UNESCO, ICHC.

²⁶⁵ As specified in Article 33 of the same convention.

²⁶⁶ Here analysed in this Chapter, Section 2.1.2.

²⁶⁷ See Lauso Zagato, *Lezioni di Diritto Internazionale ed Europeo del patrimonio culturale* (Venezia: Cafoscarina, 2013), 112.

²⁶⁸ See Janet Blake, *Preliminary Study*, 82.

²⁶⁹ See D.Fairchild Ruggles and Helaine Silverman, “From Tangible to Intangible Heritage,” in D.Fairchild Ruggles and Helaine Silverman, *Intangible Heritage Embodied* (London, New York: Springer, 2009), 11.

²⁷⁰ See Noriko Aikawa-Faure, “From the Proclamation,” 37-39.

of communities and practitioners. The same organizational structure will be used in the following 2005 Convention on Cultural Diversity.²⁷¹

The General Assembly will be composed of member states and shall meet every two years. The main responsibilities of the organ are: election of committee members and their renewal every two years; and approval of fund use, operational directives, and criteria for the selection of ICH list inscription and granting. The organ has final control over all activities conducted by the committee, and final inscription of the items on the lists and the accreditation of NGOs or other advisory bodies.

All the main activities are carried out by the Intergovernmental Committee, a renewable organ composed of representatives from 24 State Parties²⁷² and elected by the General Assembly on the principle of “equitable geographical representation and rotation” (Art. 6.1). The introduction of this organ has represented an important change to the UNESCO instrument, which did not refer to any controlling body in the 1989 Recommendation. In fact, the non-normative nature of the document itself did not impose any supervision on the State Parties. The main functions of the Committee are the following:

- promote the convention;
- encourage the implementation;
- plan the usage of the fund resources;
- find new resources;
- prepare operational directives for the implementation of the instrument;
- scrutinize the reports and the requests made by State Parties;
- report to the General Assembly.

There are no representatives from any NGOs or other organizations elected to the committee;²⁷³ however, the “advisory capacity” is recognized by all “private and public bodies,” which can be invited by the committee for consultation and assistance.²⁷⁴ In particular, this topic was discussed during the first session of the committee,²⁷⁵ where two proposals²⁷⁶ were made by the Secretariat, both of which were discarded due to their inappropriateness. The issue passed to the following session, where the focus was shifted from the proposals regarding the accreditation of practitioners, NGOs, and other experts or related centres to the accreditation of NGOs. In fact, during the Chengdu session,²⁷⁷ only the accreditation of

²⁷¹ See Lauso Zagato, *Lezioni di Diritto Internazionale*, 103-107.

²⁷² The State Parties part of the committee were increased to 24 once the convention reached the ratification of the instrument by 50 Countries. At first, only representatives from 18 countries were elected.

²⁷³ On the contrary, in the UNESCO 1972 WHC three main representatives from three different associations (International Centre for the Study of the Preservation and Restoration of Cultural Property, ICOMOS, and IUCN) are included in the committee members.

²⁷⁴ ICHC, Art. 8.4; in UNESCO, *Basic Texts of the 2003 Convention*, (Paris: UNESCO, 2016), 45, the text also includes “private persons with recognized competence in the field of intangible cultural heritage.”

²⁷⁵ Alger, 2006.

²⁷⁶ For more details see Noriko Aikawa-Faure, *From the Proclamation*, 37-38.

²⁷⁷ First extraordinary session held in Chengdu (China) in May 2006.

NGOs²⁷⁸ was resolved, with the final approval of criteria for their selection, leaving behind the issue related to communities, practitioners, and other related centres.²⁷⁹

The last body of the organizational structure established by the ICHC is the UNESCO Secretariat, which has a marginal role with only functional activities. It shall provide assistance to both the General Assembly and the committee, as well as “ensure the implementation of their decisions.”

As it concerns the main stakeholders of this convention, State Parties are the main representatives at the international level of the items inscribed and of the communities concerned. The text leaves a modest space to the communities, groups, and individuals (Art. 15), which should be included in the State Parties’ safeguarding framework.

Chapter III explains the role of states in the safeguarding of ICH, and the activities and efforts that should be fostered at the national level. Identification and safeguarding are constantly mentioned and articulated in the following articles: Art.12 - Inventories; Art. 13 - Other measures for safeguarding. Moreover, between the activities that should be carried out by the states, there is also a legislative effect, which, even though not binding, recalls all members that an *ad hoc* policy for ICH should be adopted (Art. 13(a)), as well as the establishment of competent national bodies (Art. 13(b)). Non-formal means of achieving awareness raising are listed in Article 14, where education, non-formal methods of transmitting knowledge, training programmes and “capacity-building activities” are encouraged to be developed at the national level. The awareness-raising procedure shall respect the context, communities, customary practices and other elements connected to ICH.²⁸⁰

On the other hand, at the international level, State Parties only have the duty to submit report, as stated in Art. 12.2, and reminded in Article 29. Moreover, a wish is expressed in section V: International Cooperation and Assistance, where the importance of regional, bilateral, sub-regional and international cooperation is stressed to be of relevance for the safeguarding of ICH; thus, Member States should recognize the activities aimed to ameliorate international cooperation and assistance as great importance “without prejudice” of the national sovereignty.

In concordance with international cooperation, Member States can access, as well as contribute to the fund established by UNESCO. Those eligible for grants and for international assistance shall submit their requests to the committee; on the other hand, all States Parties “undertake” to contribute to the fund every two years (Art. 26.1). The right to withdraw from the duties is explicitly declared by Article 26.2,

²⁷⁸ “DECISION 1.EXT.COM 10,” ICH UNESCO, accessed June 19, 2018.
<https://ich.unesco.org/en/decisions/1.EXT.COM/10>.

²⁷⁹ This issue will be further discussed during the following session in Tokyo (September 2007), Vitré (June 2008), and Sofia (February 2008).

²⁸⁰ All the forbidden actions are listed in the UNESCO, *Basic texts of the 2003 Convention for the Safeguarding of Intangible Cultural Heritage* (Paris: UNESCO, 2016), 48.

which states that at the time of “ratification, acceptance, approval or accession” states are not bound by the provisions of that same article. On the other hand, Article 24.5 also sets at least one of the most binding requirements set by the convention, which imposes contribution payment under the threat of a temporary exclusion from the members of the committee.

Chapter VI is concerned with the abovementioned Intangible Cultural Heritage Fund, which was established together with the 2003 Convention, and shall provide assistance to all States Parties, and granted “on the basis of the guidelines laid down by the General Assembly” (Art.25.4). as a matter of fact, the purposes are outlined in the guidelines²⁸¹ with reference to Chapter V of the convention. The main purpose of the fund is declared to be international assistance and cooperation for safeguarding, preparation of inventories, support of programmes and projects, and any purpose accepted by the committee (Art. 20). Other accepted scopes, which can justify the use of the fund, may be: replenishment of the Reserve Fund, support of the committee, cover for the costs of experts’ participation in ICH Committee sessions, cover the costs for advisory services, and “the costs of participation of public and private bodies, as well as private persons.”

Two main channels are established in order to collect the money for the fund: firstly, the obligatory contribution within State Parties to the convention; secondly, voluntary, supplementary contributions, which can be granted by State Parties, but also by private and public donors (institutions, associations, organizations, as well as individuals²⁸²). For the latter group, they can be of different types, as described on the ICH website²⁸³, respectively: earmarked for specific purpose, donated to the sub-fund, and unrestricted.

After having set out the general framework, as well as the obligations and duties of the Member States of the ICHC, Chapter IV formalises the two lists established by the instrument, which are modelled on those of the 1972 WHC. The representative List of Intangible Cultural Heritage of Humanity is the younger twin of the successful World Heritage List, established in 1972 in correspondence with the List of ICH in Urgent Need of Safeguarding and the List of World Heritage in Danger.

Once again, even in the case of list criteria, the operational guidelines help to correctly interpret the concise statements of the adopted text. Thus, for the representative list, besides more implicit characteristics, others are clearly stated, such as: the importance of community involvement and participation; planning of safeguarding measures for the item; establishment of a national inventory. On the other hand, in order to

²⁸¹ The Operational Guidelines regarding the ICH Fund were adopted by the General Assembly and added in 2008 at its second session.

²⁸² “The Intangible Cultural Heritage Fund,” ICH UNESCO, accessed June 19, 2018, <https://ich.unesco.org/en/ich-fund-00816>.

²⁸³ “Donors,” ICH UNESCO, accessed June 19, 2018, <https://ich.unesco.org/en/donors>.

inscribe an element on the urgent safeguarding list, several criteria are requested; as usual, the item shall abide to the general characteristics stated in the convention, thus, it should be classified in one of the five categories listed. Moreover, urgency is established on two main criteria, the first being its viability at risk, the latter its survival under threats. Both of these are general information, which can actually include a great variety of situations. A well-established safeguarding plan, community participation and consent, as well as inscription in a national inventory are required in order to take part in the inscription procedure.²⁸⁴

Furthermore, besides the two lists, a register of good practices must also be drawn and reported in the convention text's Article 18, which concerns projects and programmes for safeguarding. Some criteria are also suggested in detail in the operational guidelines, which can be divided into two clusters: characteristics and effect size. The first group includes: general criteria set by Art. 2.3, promotion of coordination efforts, values shared with the instrument, community inclusivity, and adaptability for developing countries. The second group lists a series of after effects, which should follow the application of the program, such as: establishment of a model that can be applied at different levels; community likelihood to cooperate, and evaluation based on single experiences.

Community Involvement

The addition of "Communities, groups and individuals" is one of the major innovations of the 2003 Convention, where for the first time they are included both in the identification and safeguarding actions. Without prior consent from the communities, groups, and individuals, State Parties cannot decide on the inscription of a specific item to the lists. The term was already used in associations with groups and individuals in the UN World Decade for Cultural Development (1987-97), when UNESCO started to shed light on the topic of living cultural heritage for communities and connect it with development.²⁸⁵

The most significant shift, however, is not in the terminology nor in the definitions, but in the participatory incentive given to communities, groups and individuals. Thus, recalling the previous Rio Declaration (1992),²⁸⁶ the UN Convention on Biological Diversity (1992),²⁸⁷ the ILO Convention (1989), the 1994 Convention to Combat Desertification,²⁸⁸ and the FAO treaty of 2001.²⁸⁹

²⁸⁴ UNESCO, *Basic texts of the 2003 Convention*, 27-28.

²⁸⁵ See Janet Blake, "*UNESCO's 2003 Convention on Intangible Cultural Heritage*," 48.

²⁸⁶ In the Rio Declaration, the participation of communities is highly praised in Principle 10 and 22 in order to achieve sustainable development.

²⁸⁷ In UNESCO, ICHC, Article 8(j), they specifically address this topic.

²⁸⁸ In UNESCO, ICHC, Article 3(a); Art.5; Art.10.

²⁸⁹ In UNESCO, ICHC, Article 9(2).

As it concerns the 2003 text, communities²⁹⁰ are mentioned in the starting definition of ICH,²⁹¹ where they represent the official owners and one of the main custodians of the items concerned. The convention recognizes the importance mutual cooperation between State Parties and communities involved²⁹² in identifying ICH, moreover the latter should give their prior consent in order to submit the nomination files.²⁹³ Moreover, Article 15 entitled *Participation of Communities, Groups and Individuals* states²⁹⁴ the fundamental role of communities in the management of the ICH, especially for the maintenance and transmission of heritage in order to keep it alive.²⁹⁵ Both identification and management are the communities of bearers' active roles, which can include activities, programs, and projects in which the community shall participate and give its approval.²⁹⁶ The Operational Guidelines (2016) give us more in depth details on the activities,²⁹⁷ which State Parties are encouraged to host in order to implement community participation: creation of a consultative body to facilitate communication with communities, actions to raise communities' awareness, capacity-building, respect and access to information and research, and development of networks between communities at all levels.²⁹⁸

Despite the presence of communities in the opening definition, however, the term has not been identified on its own in the convention. For this reason, we have to go back to the 2001 Turin meeting to find a definition for communities,²⁹⁹ which are described as knowledgeable living people who perform a given set of practices. This explanation, however, seems to refer to some specific individuals of a larger group of people who share common cultural expressions, rather than on the characteristics of the group itself.

In addition, the high potential of community involvement outside of the cultural area is underrated with no reference to sustainable development and the activities related to it, with the exception of the

²⁹⁰ Groups and individuals are considered as well.

²⁹¹ UNESCO, ICHC, Art.2(1): "The 'intangible cultural heritage'" is what "(...) communities, groups and, in some cases, individuals recognize as part of their cultural heritage. (...) and provide them with a sense of identity and continuity (...)"

²⁹² UNESCO, ICHC, Art. 11(b): "(...) identify and define the various elements of the intangible cultural heritage present in its territory, with the participation of communities (...)"

²⁹³ UNESCO, *Basic texts of the 2003 Convention*, 28.

²⁹⁴ UNESCO, ICHC, Art. 15: "(...) each State Party shall endeavour to ensure the widest possible participation of communities, groups and, where appropriate, individuals that create, maintain and transmit such heritage, and to involve them actively in its management."

²⁹⁵ In fact, the existence of ICH depends upon its living and continuing transmission and application. See: Janet Blake, "UNESCO's 2003 Convention on Intangible Cultural Heritage," 65.

²⁹⁶ For the granting process, the communities' approval and involvement is fundamental in order for the committee to base its decisions. See: UNESCO, *Basic texts of the 2003 Convention*, 30.

²⁹⁷ Communities' involvement and participation were fostered by the Subsidiary Body, under the Intergovernmental Committee request, through the drawing up of the Operational Guidelines. For more details see Lauso Zagato, "The Notion of 'Heritage Community' in the Council of Europe's Faro Convention. Its Impact on the European Legal Framework," in Nicolas Adell et al., *Between Imagined Communities of Practice Participation, Territory and the Making of Heritage* (Göttingen: Göttingen University Press, 2015), 153-154.

²⁹⁸ For more information see: UNESCO, *Basic texts of the 2003 Convention*, 43-44.

²⁹⁹ "(...) one systematically comprehends tradition as living people: those identified by their fellow community members as knowledgeable; those who can specify what is good and bad in particular instances of traditional processes, what is old and new, central and peripheral" Peter Seitel, *Proposed Terminology*.

Operational Guidelines. Chapter VI (Section 2) creates a parallel between the safeguarding of ICH and sustainable development at the national level, including a list of positive actions that affect ICH viability.

Sustainable Development

The convention's final text does not specifically refer to the details of sustainable development activities. Although the discussion on sustainable development is as old as the ICH issue,³⁰⁰ the operational guidelines attached to the 2003 ICHC reports suggestions only in the final version published during the sixth session of the assembly.³⁰¹ The decision was taken during the 2013 Intergovernmental Committee Meeting³⁰² and then passed onto the assembly. However, before that, an expert meeting had been held in Istanbul³⁰³ on September 29, 2014, in which they had established a drafting document presented at the 9th Intergovernmental Committee Meeting (November 24, 2014),³⁰⁴ which was accepted and confirmed by the assembly in DECISION 9.COM 13.b.

The established nomination system and reports by State Parties brought attention to further discuss the theme of sustainable development, which was enlarged to include culture along with the economic, environmental and social pillars. This creates the “circle of sustainability,” which is summarized in the operational guidelines into four interdependent categories: Inclusive Social Development, Inclusive Economic Development, Environmental Sustainability, and Intangible Cultural Heritage and Peace.



Fig 1 Circle of Sustainability

³⁰⁰ Discussions on Sustainable Development started in the 70's, with the Stockholm Conference on Human Environment and the establishment of the UNEP. For more details see: “Sustainable development knowledge platform,” UN, accessed June 19, 2018, <https://sustainabledevelopment.un.org/resourcelibrary>.

³⁰¹ From May 30 to June 1, 2016.

³⁰² “DECISION 8.COM 13.a,” ICH UNESCO, accessed June 19, 2018, <https://ich.unesco.org/en/Decisions/8.COM/13.a>.

³⁰³ For further information see: UNESCO, Document ITH/14/EXP/2, and “Intangible Heritage and Sustainable Development: towards new directives?,” ICH UNESCO, accessed June 19, 2018, <https://ich.unesco.org/en/news/intangible-heritage-and-sustainable-development-towards-new-directives-00099>.

³⁰⁴ “9th Session of the Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage,” UNESCO, accessed June 19, 2018, <https://en.unesco.org/events/9th-session-intergovernmental-committee-safeguarding-intangible-cultural-heritage>.

The first sphere represented by Inclusive Social Development, whose main objectives are: achieve food security; guarantee a quality health care system, respecting traditional practices; recognize formal and informal education for the transmission of knowledge, values, and skills; foster gender equality; ensure access to clean water sources.

The second group focuses on Inclusive Economic Development, which fosters economic growth of communities, groups and even individuals. It also promotes sustaining livelihoods through decent working activities and monitors the impact of tourism, which must respect the rights and wishes of the community concerned. It is widely recognized that unrestrained tourism activities could cause major risks to the safeguarding and protection of ICH and their transmitters, consistently losing the values connected to transmission. Thus, State Parties shall plan activities and foresee possible impacts on communities and on the cultural expression itself. Moreover, policies should be implemented in order to protect and ensure that the main beneficiaries are the bearers of the item, and that all technical and administrative decisions are taken in respect of the cultural value attached to the specific ICH.

For many cultural expressions the relationship with nature and natural resources is fundamental for their existence,³⁰⁵ thus State Parties should consider Environmental Sustainability along with intangible cultural heritage practices. This third group tries to encourage cooperation between science and ancestral, or traditional, knowledge, and practices concerning the natural environment, geoscience, climate change and natural disasters. Cooperation should be bidirectional, to and from traditional knowledge, and to and from science. In fact, ICH could sometimes represent the last source of traditional ecological knowledge, useful for the protection of the environment; however, sometimes practices have to also be mitigated.

Lastly, Peace and Security comprises the last group of the sustainable development measures. The term peace is here divided into four categories, respectively: social cohesion and equity, preventing and resolving disputes, restoring peace and security, and achieving lasting peace. ICH activities, which foster and transmit peaceful and righteous values, should be promoted and encouraged even outside of their own cultural realm.

³⁰⁵ “Intangible cultural heritage in nature,” Calenda, accessed June 19, 2018, <http://calenda.org/412015?lang=en>.

Section 2: Defining and Understanding the Living Human Treasures System

2.2.1. Living Human Treasures: A Definition

The term Living National Treasures, used both at the international (Living Human Treasures System, 1993, UNESCO), as well as national level (in ROK, Japan, Thailand, Philippines, France, and Romania), has been taken from the Japanese Cultural Property Law (30 May 1950),³⁰⁶ which was amended in 1954 in order to comprise people holding traditional knowledge and know-how in need of protection.

In Japan, the term *ningen kokuhō*³⁰⁷ originated in 1955 after the first holders were recognized and it has received strong criticisms from the beginning. The term used is composed of the words: *ningen*, which means human or person, and *kokuhō*, literally meaning cultural treasures. The latter was used for the first time in 1897 in order to designate works of art protected under the Ancient Shrines and Temple Preservation Law³⁰⁸ (1897-1929).³⁰⁹ Even though the official term used in the 1954 amendment was *hojisha*,³¹⁰ which means holder of intangible cultural heritage,³¹¹ the widespread use and popularity of the first term naturally substituted the latter.

The Republic of South Korea borrowed the terminology from Japanese legislation and in 1963 enacted the Cultural Properties Preservation Act,³¹² Korea directly drew from the Japanese terms by establishing the “holders”, in Korean *poyuja* (보유자). However, like in Japan, the Korean public widely used the definition “living human treasures”, *inganmunhwajae* (인간문화재). In this case, the consequences which brought to the substitution were due to a series of articles published in the cultural section of the *Hanguk Ilbo*³¹³ in 1960 by the young journalist Ye Yong-Hae.³¹⁴ The writer sustained that the term, which was coined by himself, corresponded with the definition used in the Cultural Properties Protection Act, namely “intangible cultural property.”³¹⁵

³⁰⁶ In Japanese: *Bunkazai hogohō*, 文化財保護法, Law n. 214.

³⁰⁷ In Japanese: 人間国宝.

³⁰⁸ In Japanese: *Koshaji hozonhō*, 古社寺保存法, Law n. 4.

³⁰⁹ See Peter Siegenthaler, “The Ningen Kokuhō: A New Symbol for the Japanese Nation,” *Andon* 62, (June 1999): 3-16.

³¹⁰ The longer and more complete term in Japanese is *Jiyō Mukei Bunkazai Hojisha*, 重要無形文化財保持者.

³¹¹ See Jong-Sung Yang, *Cultural Protection Policy in Korea: Intangible Cultural Heritage Properties and Living National Treasures*, (Seoul: Jimoondang, 2003).

³¹² In Korean: *Munhwajae Pohobōp*, 문화재 보호법.

³¹³ In Korean: 한국일보.

³¹⁴ From Ho-Jeong Soul, “The Hidden Friends of Living Human Treasures,” *Koreana* 26, n.3, (Winter, 2012): 22-25, https://issuu.com/the_korea_foundation/docs/2012_koreana_autumn_en. The name of Yong-Hae Ye is written in Korean: 芮庸海.

³¹⁵ “In the book’s foreword, Ye wrote that the term ‘living human treasure,’ which he had coined, was equivalent to the term ‘intangible cultural property’ found in the newly-enacted Cultural Properties Protection Act. ‘Firstly, living human treasure refers to intangible cultural property, and although I did not follow any official procedures, I made an effort to select those who are the best in their fields...’” from Ho-Jeong Soul, “The Hidden friends.”

In 1993, the Republic of Korea proposed the establishment of the “Living Human Treasures system”³¹⁶ to the UNESCO Executive Board and during the 142nd session the Executive Board adopted a resolution on the Living Human Treasures System.³¹⁷

The definition “living human treasures” is explained in the UNESCO Guidelines for the LHT system: people who hold particular skills at the very highest degree and their techniques should be of great importance for cultural life and necessary in order to keep on producing material cultural heritage.³¹⁸ Holders are addressed as “treasures,” which have to be living and part of the human species. Thus, more value is given to the living heritage, which can subsist only if the bearer still holds certain skills and techniques and he/she is able, or keen, to transmit it to future generations in order to not extinguish the cultural knowledge attached to it.

The Japanese legislation defines “Living National Treasures” as: “those who have mastered or possess exceptional skills in arts and crafts.”³¹⁹ What kind of arts and crafts should be included, and what criteria should be considered are criteria to be established by the Agency for Cultural Affairs.

Concerning Korea, the “Living Human Treasures” are recognized by law as “holders” of an important intangible cultural property, namely: drama, music, dance, craftwork technique and others of artistic or historical value.³²⁰ Moreover, Korea has recently enforced a new act on the protection of ICH, where the term “living human treasure” is defined as a “collective title denoting holders and honorary holders recognized”³²¹ by law, thus clarifying even more the use of this denomination.

2.2.2. ROK Proposal and the 1993 UNESCO “Guidelines for the Establishment of the Living Human Treasures System”

On June 30, 1993, the Republic of Korea government sent a letter proposal³²² written by Ambassador Sang-Seek Park³²³ to the UNESCO executive board. What followed was a series of

³¹⁶ The letter was sent to the executive board on June 30, 1993.

³¹⁷ UNESCO 142 EX/18 and 142 EX/48.

³¹⁸ “Living Human Treasures are persons who embody in the very highest degree the skills and techniques necessary for the production of selected aspects of the cultural life of a people and the continued existence of their material cultural heritage.” from UNESCO, *Guidelines for the Establishment of the Living Human Treasures System* (Paris: UNESCO, 2002), 19.

³¹⁹ See UNESCO, *Guidelines for the Establishment of the Living Human Treasures System*, 13.

³²⁰ See Republic of Korea, *Cultural Properties Protection Act*, Amended by Law n. 3644, December 31, 1982, Ch.1 Art.1, and Ch.2 Section 1 Art. 5(2).

³²¹ Republic of Korea, Act on the safeguarding and promotion of intangible cultural heritage, Act No.13248, March 2015.

³²² The proposal presented by the Republic of Korea was also supported by Pakistan, China, Turkey, Thailand, Argentina, and Philippines.

³²³ Sang-Seek Park was a permanent delegate at UNESCO as representative for the Republic of Korea between 1992-1994. He also assumed the role of Minister of Foreign Affairs (1956-1961), Consul General in Boston, Korean Consulate (1988-1992), Ambassador at the Korean Embassy in Singapore (1996-1998).

proposals³²⁴ to strengthen the 1989 Recommendation and foster international attention about cooperation in the folklore protection field, which later turned into intangible cultural heritage.

The proposal suggested the establishment of a system of “Living National Treasures,”³²⁵ in order to contribute to and reinforce the 1989 Recommendation objectives in response to the scarce international awareness and the passive role in the document’s implementation at the national level.³²⁶

The letter explains the proposed application with actions both at the national and international levels as well as some difficulties, benefits, and implementation methods for states. The ROK’s proposition arose for both political and cultural reasons. The LHT system and enforcement of the 1989 Recommendation are seen as aligning the historical and developed-developing countries’ relationships, through mutual cooperation and understanding.³²⁷ Moreover, the enforcement of the holders’ role should raise awareness about the protection of ICH through transmission and dissemination practices.

In order to develop the system, the letter suggests to State Parties to institute a committee for living human treasures at the national level, which shall establish the criteria to be used in the selection process. The selection should be applied to only the bearers who transmit through oral or physical performances, such as music, dance, games and plays of “outstanding artistic and historical value.” Languages, literature, handicrafts, and architecture are excluded from the selection.

Under Section B, the proposal refers to the “World List” and introduces the role of UNESCO at the international level. Thus, the original intention of ROK is made explicit: the inclusion of the system in the wider World Heritage List project, and the creation of a new convention for LHT protection.

After the proposal was submitted to the UNESCO executive board, the system of “Living Human Treasures” was adopted and enacted during the 142nd Executive Board Session,³²⁸ and the guidelines were distributed in 1996 and further implemented in 1997 during the 29th General Conference Meeting in

³²⁴ Other pilot projects related to the safeguarding and protection of folklore and traditional culture were suggested during the International Consultation of New Perspectives for UNESCO’s Programme: Intangible Cultural Heritage, held between June 16-17, 1993 at the UNESCO headquarters in Paris. Vietnam suggested the pilot project on “Protection, Conservation and Revitalization of the Non-Physical Cultural Heritage of the Hué Region;” the representatives from Niger of the Musical Training and Promotion Centre of Niamey proposed a project on the “Safeguarding and Revitalization of Traditional Music in Niger;” the Ministry of Culture and Education in Hungary presented the “Creation of a Network of Research Institutions for the Safeguarding, Revitalization, and Dissemination of the Traditional and Popular Cultural Heritage in the Sub-Region of Central and Eastern Europe;” Mr. Hatem Touil (Tunisia) introduced a project for the “Collection, Training in Collecting Techniques and Revitalization of Traditional Music and Dance in Tunisia;” lastly, “The Intangible Urban Heritage of the Historic Centre of Mexico City (1940-1990), Documentation and Promotion,” made by Mr Néstor Garcia Canlini. For further information and details see UNESCO, 1993, CLT/ACL/IH/01.

³²⁵ The proposal is reported in UNESCO, 142 EX/18.

³²⁶ It should be remembered that most of the UNESCO Member States did not reply to the reporting procedure’s first call for the 1989 Recommendation in 1991. Thus, stressing the State Parties’ weak interest in taking active actions in favour of folklore protection.

³²⁷ “In the field of culture, developed and developing nations are both benefactors and beneficiaries” and “the purpose of protecting intangible cultural properties is not only to promote respect for cultural diversity and enrichment of artistic values, but also to promote mutual understanding of each other’s way of life” from UNESCO, 142 EX/18, p. 3.

³²⁸ UNESCO Document 148 C/42.

Resolution 23.³²⁹ In October 1996, the *Policy Meeting on the Development of Methodology for the Preservation of Intangible Heritage* was convened in Seoul by the Korea National Commission for UNESCO. Then, between 1998 and 2001, the meeting was followed by eight international workshops³³⁰ on the Living Human Treasures System, four of them held in the Republic of Korea (Seoul, Namwon, and Gangeung).

The guidelines are meant to help State Parties set up the system by giving general suggestions in order to define the objectives and definitions. As it concerns the legal provisions, any duties or restrictions are not established. It is up to Member States to decide whether or not to set up an administrative system within the legislative structure or any legal provisions.³³¹ Nevertheless, in the opening section it is strongly recommended that an appropriate legislation and policy system be established in order to foster the preservation of both LHT and ICH.³³²

In the opening section, the text refers to “intangible cultural heritage”³³³ as the main offspring of LHT, thus its preservation, dissemination, promotion, protection and transmission are secondary. The system puts people at the centre together with their learning processes, which are valued as outstanding and relevant for future generations. Under this perspective, the main objectives can be summarized as follows: preservation, continuity, development, transmission, and enhancement.

The Living Human Treasures can be held by individual representatives or groups of people with a main leader elected by the peers. The task of selecting the bearers is up to a Commission of Experts, which should also be responsible for indicating what kind of ICH is in the position to be preserved and supported by the state, molding the idea of a list similar to that of the WHC or an inventory system, such as the one suggested by the 1989 Recommendation.

The prestige referred to in the proposal³³⁴ is also reported in the final text, where it is suggested as a reward system at the national level along with the establishment of an activities programme related to it.³³⁵ Social welfare, financial supports, prestige and publicity are the four main pillars of the reward system

³²⁹ Resolution 23 in the 29th General Conference UNESCO records, emphasizes the support for the LHT program and proclaims spaces or forms as cultural expressions of the “oral heritage of humanity.”

³³⁰ The eight international workshops: 1998,1999, 2000, 2001 in the Republic of South Korea; 1999 in Italy; 2001 in Japan; 2001 in Philippines, and in 2002 in the Czech Republic.

³³¹ UNESCO, *Guidelines for the Establishment of Living Human Treasures Systems*, 20.

³³² “This requires that special recognition and support should be given to people who embody the skills and techniques to the very highest degree as Living Human Treasures. Preservation can only be achieved through the implementation of appropriate legislation and policy” UNESCO, *Guidelines for the Establishment of Living Human Treasures Systems*, 19.

³³³ Thus, the restrictions set by the letter proposal to do not include languages, handicrafts, literature and architecture. In addition, the guidelines explicitly state (Art. 1.2) that among ICH there are skills and knowledge regarding: “Languages, oral traditions, costumes, music, dance, rituals, festivals, traditional medicine, food preparation and presentations, handicrafts and architectural skills.”

³³⁴ “Those inscribed on the national and international living human treasures lists would enjoy prestige in their respective countries, as do the cultural and natural properties on the World Heritage List.” in UNESCO, 1993, 142 EX/18, p. 2.

³³⁵ UNESCO, *Guidelines for the Establishment of Living Human Treasures Systems*, 25.

suggested by UNESCO to Member States. Along with the benefits, appointees also have duties, such as transmission to younger generations, which should be done through a “prescribed training system,”³³⁶ moreover, they have to publicly perform or display their cultural heritage, provide some help in recording and archiving useful information for the preservation of cultural heritage and further develop their skills and know-hows. These tasks follow the above-mentioned objectives of the system and, along with State Parties and UNESCO efforts, shall provide a proper and sustainable LHT safeguarding methodology.

Finally, the issue related to legal protection of the intellectual property rights connected to ICH, and in specific with the LHT’s knowledge, is once again reported as lacking at the international level. Nevertheless, State Parties shall develop appropriate policies reflecting the local understanding on cultural identity and traditions, in respects to the existing international legislation.³³⁷

The system should be seen as one of the ongoing activities that UNESCO was putting into action during those years preceding the adoption of the 2003 ICHC. Together with the Proclamation of the Masterpieces of the Oral and Intangible Cultural Heritage (2001), The Red Book of Endangered Languages of the World (1993),³³⁸ The UNESCO Collection of Traditional Music of the World, the 2001 Universal Declaration on Cultural Diversity, as well as other projects and instruments, the system constitutes a useful tool for raising international awareness about the need to safeguard ICH. Following this, transmission will be considered in the new convention under Art. 2.3 as one of the safeguarding “measures aimed at ensuring the viability of the intangible cultural heritage.” Thus, the LHT system not only foreruns the idea of preserving the skills and knowledges of cultural expressions, but also underlines the fundamental role of generational transmission and communities’³³⁹ involvement.

³³⁶ A specific chapter called “Training” focuses on the main objectives of the system, which should be developed at the national level and monitored by the Commission of Experts and governmental/non-governmental bodies. See UNESCO, *Guidelines for the Establishment of Living Human Treasures Systems*, 27.

³³⁷ UNESCO, *Guidelines for the Establishment of Living Human Treasures Systems*, 27.

³³⁸ Launched by the Japanese government.

³³⁹ In this case communities of bearers.

Chapter 3

Republic of Korea: ICH and Living Human Treasures System

Section 1: Historical Framework

This section introduces the historical context where the 1962 Cultural Property Protection Law (hereinafter: CPPL) stems from, and then focuses on two main aspects closely involved with the protection of ICH and National Human Treasures, namely: the rise of Korean nationalism and the establishment of Korean folklore scholarship. These two aspects of Korean society, before and after independence, are extremely important in order to fully understand the first government-led politics in favor of folk traditions and intangible cultural heritage. South Korea and Japan represent the first two countries in the 2003 UNESCO Convention, which organized the safeguarding system including ICH at the national level and focused specifically on transmitters. It is important to analyse the context which helped develop such concern for contingent reasons which are stressed in the following sections, fully aware that the Korean system owes much to the Japanese one.

3.1.1. Historical Background

The constitution of a modern state begins from the recognition of a specific cultural identity attached to an identified population and land.³⁴⁰ However, the most recent establishment of a national policy states that in order to protect traditional culture it has to be analysed from a historical perspective. Then, it may plunge into more complex topics, such as national identity, nationalism, and folklore, here discussed in the following sections. Without this context, this section would probably lose sight of the historical period from which intangible heritage and living national treasures protection clearly emerged at the national level.

For this reason, this section concentrates on more recent historical topics, precisely from the division of the Korean peninsula into two separate countries until the early Nineties. The decades following the CPPL enactment (1962) are fundamental in order to understand the evolution of Korean cultural politics and the different governments' perspectives on culture, with its nadir during the 1988 Summer Olympic Games held in Seoul.

³⁴⁰ Based on Smith's theory that civic and territorial elements sometimes predominate in the formation of nationalism. See Anthony D. Smith, *National Identity* (Nevada: University of Nevada Press, 1991), 13.

The political and economic reconstruction after the Korean War, which had divided the peninsula into two separate countries with opposite political ideologies, saw the strong US interference in the Korean Government, which consisted in the massive economic aid for the sponsorship of reconstruction. In 1952, Yi Süng-Man (1875-1965)³⁴¹ was re-elected, also supported by the American protectorate in South Korea.

The late president ruled the country with an iron fist, removing his political opponents with force and applying a strong censorship in the country. In order to do so, in 1954 he amended the existing Constitution in order to extend his mandate.³⁴²

The war, rapid urbanization, and Land Reform (1949) had slightly transformed traditional values, based on a neo-Confucian society (family, clan and locality), and eliminated the old aristocratic landlords, called *yangban*.³⁴³ The latter to be substituted by the upsurge of new business tycoons in cities.

Concerning the traditional culture sector, the short peaceful period during the First Republic, which followed the independence from Japanese colonial rulers and the fratricide war, had not allowed space for the reconstruction of rich cultural resources, which were destroyed by cultural assimilation propelled by Japan. Afterwards, as the Korean war finished, Americanization followed, leaving behind most of traditional folk culture. In Korean universities, humanities colleges were established, where Korean culture was mostly substituted by the studies of Western music, literature, art, drama, and theater.³⁴⁴

This period also marked the affirmation of Korean national identity, both politically and socially. Anti-Japanism was largely diffused due to the hostile approach of Yi Süng-Man's government, which would not accept any economic relationship with the older colonizer³⁴⁵, despite the significant financial assistance received by the US, which advocated Korea to open up to Japanese trade relationships. On the other hand, the common people wanted the country to be reunified and democratic. With Yi losing public support and violent riots instigated by government-led thugs, a common tactic already used in the past, the American "protectorate" put pressure on Yi to resign. The national identity's double-edged sword brought down the First Republic regime and, for the first time, the oppressed population peacefully fought for the legal election of a new government.

³⁴¹ In Korean: 이승만, 李承晩.

³⁴² See Ki-Baik Lee, *A New History of Korea* (Cambridge-London: Harvard University Press, 1984), 382.

³⁴³ The Korean society was stratified in three different social classes, namely: the upper class, achieved through government service called *yangban*; the middle class constituted by farmers and tenants, that was called *sangmin*; and lastly the *Ch'önmin* composed of butchers and barbers. This information was collected from Ki-Hyok Pak and Sidney D. Gamble, *The Changing Korean Village* (Seoul: Shin-Hung Press, 1975), 56-57.

³⁴⁴ See Jong-Sung Yang, *Cultural Protection Policy in Korean Intangible Cultural Properties and Living National Treasures* (Seoul: Jimoondang, 2003), 97.

³⁴⁵ Andrew C. Nahm, "Korean Nationalism its Origins and Transformation," *Korea Journal* 23, n. 2 (February 1983), 33. It should be noted that, despite the so-called anti-Japanism of Yi's government, Professor Kim Hak-Chun writes that the First Republic was characterized by men who sustained and collaborated with the Japanese colonizers, thus the government's anti-Japanese attitude was only a political and "emotional slogan."

After a very short period of democratic government (1960-61), Park Chŏng-Hŭi's³⁴⁶ dictatorship was declared in 1963. He was previously nominated Supreme Counsellor of National Reconstruction (SCNR)³⁴⁷ with a military coup, which led to the Third Republic. Once again, censorship, dictatorship, and elimination of political opponents kept on characterizing the peninsula, starting from the sprout of the new republic. A lively protest of university students expressed concern after the military junta took power. Poets and intellectuals were concerned about the possible Japanese economic invasion and its support of the new dictatorship. Both in 1963 and 1964 during the protests, students performed shamanic rituals to renew the "depleted spirit of the nation" and in order to awaken the unification spirit of the masses. Thus, the traditional shamanic culture based on a unique cultural syncretism³⁴⁸ became the new form of criticism and a symbolic reference for the folk culture and *minjung*'s³⁴⁹ participation in the national reunification and national self-determination. In 1964, students gathered at the Seoul National University and performed the "legendary ritual to invoke native land consciousness", which finished with the "funeral of national democracy."³⁵⁰ This historical protest, in the form of a performance against the oppressive government, became a typical protest ritual in the recent history of Korean folk demonstrations. The origin of the *minjung* students' movements of the Sixties and Seventies contrasted with the *yusin*³⁵¹ ideology by Park Chŏng-Hŭi and will evolve into the anti-Americanism of the Eighties.³⁵²

It was during the Sixties that the Korean economy started to gain strength and the country underwent a rapid industrialization. Park Chŏng-Hŭi realised the importance of conquering national economic sovereignty, without relying on US aid. Thus, the journey to economic independence began through national efforts, fights against business corruption, and the nationalization of banks. In addition, another significant issue was represented by the rural question. In the countryside, farmers were still very poor, and Park's government tried to raise rural inhabitants from poverty through the New Village

³⁴⁶ In Korean: 박정희.

³⁴⁷ This council was created by the military rulers after the *coup d'état* by Park Chŏng-Hŭi and Kim Jong-Pil, and was given power over the government.

³⁴⁸ See Hyun-Key Kim Hogarth, *Korean Shamanism and Cultural Nationalism* (Seoul: Jimoodang, 1999), 45-47.

³⁴⁹ The Korean term "*minjung*," 민중 (民衆), literally means "people." In Korea, it first appeared in the Sixties, when few "literary critics used the term" in order to define "popular masses." Then, following this insertion in the Korean language, university students appropriated it for the criticisms expressed against the government through the mask-dance drama folk tradition. However, very few Korean people were accustomed to this word, most of them did not really know its meaning. Chung-Moo Choi, "The Minjung Culture Movement and the Construction of Popular Culture in Korea," in ed. by Kenneth M. Wells, *South Korea's Minjung Movement - The Culture and Politics of Dissidence* (Hawaii: University of Hawaii Press, 1995), 110-111.

³⁵⁰ See Kenneth M. Wells et al., *South Korea's Minjung Movement - The Culture and Politics of Dissidence* (Honolulu: University of Hawaii Press, 1995), 109.

³⁵¹ The years between 1971 and 1979 are sometimes referred to as the *Yusin* (or *Yushin*) era, a period marked by oppressive reforms, a new constitution, and a government where the president had much of the power in his hands. *Yusin*, which literally means "revitalizing," marked the second coup carried out by the dictator in 1972 and was called after the Japanese *Isshin* reforms "carried out in the late nineteenth century." Michael J. Seath, *A History of Korea - From Antiquity to the Present* (Lanham: Rowman & Littlefield Publishers, 2011), 407-409.

³⁵² See Gi-Wook Shin, "Nation, History, and Politics: South Korea," in *Nationalism and the Construction of Korean Identity*, ed. by Huyng-Il Pai and Timothy R. Tangherlini (Berkeley: Korea Research Monograph, 1998), 148-165.

Movement³⁵³ launched in 1971-73. This plan should have brought modernisation and discouraged traditional costumes, a political ideology adopted in 1962 by Park's administration which was against the CPPL. The system³⁵⁴ changed the country very rapidly, not only architectonically with the substitution of ancient houses with more modern structures, but it also changed the Korean perspective on religion and traditional cultural expressions. Shamanism was treated like a superstition, and cultural heritage was eradicated in order to modernize and change people's mindset from a defeatist one to an assertive one.³⁵⁵ Most of the temples in the countryside were dismantled and all neo-Confucian ceremonies, related to the family and to the ancestors, were discouraged as a waste of time and money.³⁵⁶ The traditional neo-Confucian faith was substituted by the three main pillars on which the movement was based, respectively: diligence, self-help, and cooperation. The Korean social customs oppressed during Japanese colonization had been starting to die out and the New Village Movement had accelerated the process in rural areas.

As mentioned above, the 1962 CPPL was adopted during the military regime of Park Chŏng-Hŭi, who ruled for two decades until 1979. The protection of traditional cultural properties (namely: tangible, intangible, monuments, and folklore materials) through national efforts was strongly in contrast with the advocated modernization at all levels of the nation and subsequently of the citizens' lives. Thus, during Park's dictatorship, two opposite approaches cohabited inside the government: economic goal to foster development on the model of Western countries and Japan and, on the other hand, strong nationalism justified by the protection of cultural properties and cultural traditions. The CPPL was used in order to promote the president as a nationalist, despite his Westernized politics, and to distract the public from the strong similarities between his policies and the Japanese ones as well as from the total lack of freedom and democracy. Also, the CPPL had numerous analogies with the Japanese Cultural Property Law (1950),³⁵⁷ and this should not be a surprise. In fact, during the Japanese occupation the president had enrolled in the Manchukuo Military Academy held by Japan and was commissioned second lieutenant in the Japanese army. When he became president, Korea re-established economic relationships with its previous colonizer

³⁵³ *Saemaül Undong*, 새마을 운동, for more information see Ki-Hyok Pak and Sidney D. Gamble, *The Changing Korean Village* (Seoul: Shin-Hung Press, 1975).

³⁵⁴ Since 2012, the movement's documents, laws, and president's speech regarding the topic have been registered as a part of the UNESCO project, "Memory of the World." <http://www.unesco.org/new/en/communication-and-information/memory-of-the-world/register/full-list-of-registered-heritage/registered-heritage-page-1/archives-of-saema-ul-undong-new-community-movement/>.

³⁵⁵ Asian Development Bank, *The Saemul Undong Movement in the Republic of Korea - Sharing Knowledge on Community-Driven Development* (Mandaluyong, Philippines: Asian Development Bank, 2012), 49.

³⁵⁶ Interesting examples of the social customs still practiced in two South Korean villages are reported in Ki-Hyok Pak and Sidney D. Gamble, *The Changing Korean Village* (Seoul: Shin-Hung Press, 1975), 63-70.

³⁵⁷ Keith Howard, "'Living Human Treasures' from a Lost Age: Current Issues in Cultural Heritage Management," *Korean Research Journal of Dance Documentation* 3, (Fall 2012): 51-74.

for the first time after the independence (1965). Moreover, he defined *Yusin* (in Korean “revitalizing”) his own government, recalling the *Ishin*³⁵⁸ one made by Japan.

Together with the CPPL, the newly established Ministry of Culture and Public Information³⁵⁹ enacted a series of national laws and plans, in order to foster Korean culture: The Cultural Assets Conservation Act (1962) and the Culture and Arts Promotion Act (1972) were adopted, and between 1974 and 1978 the Five-Year Plan for the Revival of Culture and Arts³⁶⁰ programmed national objectives in the field. In this way, culture underwent a strong politicization, passing under government control and power. Culture also became an instrument for depriving the North Korea communist party of legitimacy. As for Park, Kim Il-Sung’s³⁶¹ personality cult was based on foreign ideologies, which were “wholly alien to the tradition”³⁶² of the peninsula and detrimental to Korean national identity. From this point forward, slogans such as: “re-creation of traditional culture”³⁶³ and “re-discovery of national culture”³⁶⁴ became popular in government statements, documents, and representations. In the Sixties, the Ministry of Culture and Public Information started to commission folklorists, such as Lee Du-Hyun, to do research for the designation of intangible cultural properties.³⁶⁵ Most of these scholars involved in the research were also part of the Intangible Cultural Heritage Committee, established at the time of the CPPL. Traditional cultural expressions became the pride of Park’s junta, and from 1958 onwards, the National Folk Arts Contest awarded folk performances based on the judgement of the ICH committee.

On the other hand, with student and intellectual driven associations and movements, such as the Malttugi Association³⁶⁶ and the Minjung Culture Movement, folk culture was revitalized in light of political and social resistance against the oppressive government and authoritarian-led cultural ideology. Both of

³⁵⁸ Japanese historians usually refer to as “Meiji Ishin” (明治維新), meaning the Meiji Restoration. This was a radical transformation, which at first coincided with a political change, followed by economic and social renovation. Since 1868, through a *coup d’état*, the power was returned to the imperial house and this marked the beginning of the construction of a modern state, which could stand Western countries. Rosa Caroli and Franco Gatti, *Storia del Giappone* (Bari: Editori Laterza, 2006), 137-147, and “Meiji Restoration,” *Encyclopedia Britannica*, accessed June 19, 2018, <https://www.britannica.com/event/Meiji-Restoration>.

³⁵⁹ Previously during Yi Süngman’s government, the office was named Office of Public Information, under the Department of Public Information. It was during Park’s junta that it was upgraded to include culture as well.

³⁶⁰ In Korean: *문예진흥 5개년 계획*, *Munyechinhung 5-gaeyon kyeheok*, .

³⁶¹ In Korean: *김일성*.

³⁶² These words were pronounced by Park Chōnghūi in person and registered in his *Major Speeches*. The text was taken from Gi-Wook Shin’s “Nation, History, and Politics: South Korea,” in *Nationalism and the Construction of Korean Identity*, ed. by Huyng-Il Pai and Timothy R. Tangherlini (Berkeley: Korea Research Monograph, 1998), 153.

³⁶³ In Korean: *전통 문화 재현*, *joenttong munhwa jaehyong*.

³⁶⁴ In Korean: *민족 문화 재발견*, *minjok munhwa jaebalgyeon*.

³⁶⁵ See Jong-Sung Yang, *Cultural Protection Policy in Korean Intangible Cultural Properties* (Seoul: Jimoondang, 2003), 56.

³⁶⁶ The *Malttugi* (말뚝이) Association was founded by university students in 1967 after the name of one of the Pongsan mask-dance drama characters, a server named *Malttugi*. It was a folk-theater research association, which used the traditional cultural expression of mask-dance in order to subvert social hierarchical order through satire. For more information see Chung-Moo Choi, “The Minjung Culture Movement and the Construction of Popular Culture in Korea,” in *South Korea’s Minjung Movement - The Culture and Politics of Dissidence*, Kenneth M. Wells et al. (Honolulu: University of Hawaii Press, 1995), 107-118.

these approaches used traditional culture as a symbol of nationalist legitimation or a subversive inversion of the social order.³⁶⁷

Theater and literature have been active participants in this lively cultural period. In the Seventies, theater shows, and texts were strongly inspired by traditional Korean mask-dance expressions,³⁶⁸ like the *Malttugi*³⁶⁹ Association, and they mixed together Eastern traditions with Western elements. The lively cultural, political, and economic atmosphere saw a great number of writers and poets involved in the protests against capitalism, industrialization, and authoritarianism. Poets and playwrights, such as O T'ae-Sök (1940 -),³⁷⁰ and writers like Kim Chi-Ha (1941 -)³⁷¹ used topics, forms, or expressions typical of *p'ansori*, a traditional form of popular performance storytelling. The revitalization of folk oral traditions in modern Korean literature started by the end of the Sixties; it was first initiated by Pak Mog-Wöl in the late Fifties and continued for all the Eighties, giving rise to the revitalization of folk song movements.³⁷² In addition, with the arrival of the first missionaries from Europe and other Western countries, folk tales and folk oral traditions became popular tools in order to approach far-Eastern cultures, such as the Korean one,³⁷³ even though no scientific value can be appointed to these works, which only had a narrative intent.

When Park was assassinated, the country had a systematized set of national policies for the protection and organisation of culture and arts for the first time. For two decades, the government had set the foundation for the following junta's actions in this field, despite the oppressive methods. The following period, under Chun Doo-Hwan's government,³⁷⁴ will carry on the idea of culture as a service of authoritarian government. Traditional folk expressions will be used in order to strengthen national cohesion and Korean identity, in contrast to foreign-led ideologies and cultural forms. For this reason, the time between the third and fifth republic can be considered as a closed-door period in terms of international

³⁶⁷ See Jong-Sung Yang, *Cultural Protection Policy in Korean Intangible Cultural Properties* (Seoul: Jimoondang, 2003), 88, and Chung-Moo Choi, "The Minjung Culture Movement and the Construction of Popular Culture in Korea," in *South Korea's Minjung Movement - The Culture and Politics of Dissidence*, Kenneth M. Wells et al. (Honolulu: University of Hawaii Press, 1995), 110.

³⁶⁸ Such as, 'i'alch'um and p'ansori.

³⁶⁹ *Malttugi* (in Korean: 밀떡이) is a type of Korean traditional mask, which is used in mask-dance theatre and dances. "Malttugi Mask," National Museum of Korea, accessed June 19, 2018, <https://www.museum.go.kr/site/eng/relic/search/view?relicId=7370>.

³⁷⁰ For more information, see Antonetta L. Bruno and Maurizio Riotto, *La letteratura coreana: 2* (Roma: L'asino d'oro, 2014), Kindle. In Korean: 오래석.

³⁷¹ Chung-Moo Choi, "The Minjung Culture Movement and the Construction of Popular Culture in Korea," in *South Korea's Minjung Movement - The Culture and Politics of Dissidence*, Kenneth M. Wells et al. (Honolulu: University of Hawaii Press, 1995), 111-112. In Korean: 김지하.

³⁷² See Antonetta L. Bruno and Maurizio Riotto, *La letteratura coreana: 2*, (Roma: L'asino d'oro, 2014), Kindle.

³⁷³ James H. Grayson, "Son Chint'ae and the Foundations of Modern Korean Folklore Studies," *Folklore* 129:1, (March 2018), 2-3.

³⁷⁴ In Korean: 전두환.

dissemination of Korean culture,³⁷⁵ and in terms of political efforts to preserve folk traditions through cultural policies.

When Chun Doo-Hwan became president in 1980, he started drawing on his predecessor's example and used living human treasures as propaganda. This can be clearly seen in national events, such as: Chun's inauguration ceremony Chungukpung in 1981, and in the 1988 Seoul Summer Olympic Games.

Performers and performances were perceived by the public as "Chun's government's" support to "Korea's traditional cultures" and not as part of his "political agenda."³⁷⁶ However, university students were already accustomed to this kind of propaganda and, just before the 1988 Olympic Games, massive demonstrations were held with active participation of normal people. As for the preceding protests in the Sixties and Seventies, people used popular culture to express various dissents: national-led oppressive use of folk traditions, social government repressions, anti-American sentiments, and awareness raising of people's sovereignty over national culture.³⁷⁷ In fact, thanks to national policies performers were obliged to transmit their arts. Thus, during the Eighties, there was much more public consciousness about the importance of traditional culture. Moreover, Chun's government subsidized the construction of local exhibition centres and theatres, which were open to the public, such as the Transmission Center for Intangible Cultural Properties.³⁷⁸ In this way, the government had succeeded in regenerating traditional culture, even though general rejection towards cultural government policies was widespread. The National Cultural Movement³⁷⁹ is one example. It appeared in the Seventies on university campuses and by the Eighties it had expanded beyond. The movement also marked the uprising of anti-Americanism.

Despite the less strict control over the cultural industry, Chun reinforced mass media control over the government with the duopoly KBS and MBC, which became state-owned TV broadcasting channels.³⁸⁰ He enacted three major plans for cultural development: New Plan for Cultural Development (1981), the Cultural Plan in the Sixth Five-Year Plan for Economic and Social Development (1986), and the Promotion of Local Culture Law (1984).

³⁷⁵ See Mi-Sook Park, "South Korea Cultural History Between 1960s and 2012," in *How "Hallyu" Outcome in Asia Since the Early of 2000s* (PhD. diss., University of Sheffield, 2014), 71-118.

³⁷⁶ See Jong-Sung Yang, *Cultural Protection Policy in Korean Intangible Cultural Properties* (Seoul: Jimoondang, 2003), p. 90.

³⁷⁷ See Jong-Sung Yang, *Cultural Protection Policy in Korean Intangible Cultural Properties* (Seoul: Jimoondang, 2003), 99-100.

³⁷⁸ In Korean: 무형 문화재 전수회관, muhyoeng munhwua jeonsuhoegwan.

³⁷⁹ In Korean: 민족 문화 운동 minjok munhwa undong.

³⁸⁰ For more information regarding the TV broadcasting situation during the Chun Doo Hwan's regime, see: Mi-Sook Park, "South Korea Cultural History Between 1960s and 2012," in *How "Hallyu" Outcome in Asia Since the Early of 2000s* (PhD. diss., University of Sheffield, 2014), p. 88.

The state's control over culture continued to focus more on the regulation of this sector, rather than on people's participation and promotion. This aspect will change between 1988 and 1993 during Roh Tae-Woo's³⁸¹ government.

After several decades of dictatorial regimes, the following periods will represent the transition to more democratic governments. On one hand, the Eighties were characterized by a democratic system and, on the other, radical students and workers' protests. The country started to open-up to international trade relationships, and the cultural sector was also marked by the arrival of foreign cultural industries and cultural policies in favour of international exchange. The Chun's Cultural Plan in the Sixth Five-Year Plan for Cultural Development was substituted by the Ten-Year Masterplan for Cultural Development (1990), which mainly focused on "culture for all the people,"³⁸² similar to cultural welfare and open-door policy. The construction of the Korean cultural identity contradicted all the preceding cultural policies. This was Roh's primary goal along with the promotion of regional culture and ethnic reunification.³⁸³

Finally, the first democratic government³⁸⁴ as well as the first democratic cultural policies were initiated and with this labor strikes also occurred. Thus, like a domino effect, South Korea lost competitiveness in the market and was marked by a rapid national economy slow-down during the Nineties. On the other hand, liberalization of media brought new investments in the country and a subsequent drop in domestic film production, which was also due to the ongoing restrictive censorship.³⁸⁵

Since the establishment of the First Republic, South Korea has used and safeguarded traditional culture. The first policies amended in 1962 established a protection system, which will be amended several times during the following decades. Starting from Yi Sŭng-Man's government, folk culture was mainly used in order to enforce national identity. The recent Korean war had undermined the already fragile cultural unity, strongly weakened by previous Japanese colonialism. The following governments ruled by using folk culture and living human treasures in order to justify their power and their politics. Thus, culture became a tool for propaganda. A different perspective on culture will start to emerge with the transition to democracy marked by Roh Tae-Woo's junta. The Sixth Republic started to open up to international exchanges, a project

³⁸¹ In Korean: 노태우.

³⁸² This was a catch phrase inside the Ten-Year Master Plan.

³⁸³ See Hak-Soon Yim, "Cultural Identity and Cultural Policy in South Korea," *The International Journal of Cultural Policy* 8, (2002), 37-48.

³⁸⁴ However, it should be the second democratic government since the first one was the really short democratic experience of the Second Republic (1960-61) held by Chang Myon, between Yi Sŭng-Man and Park Chŭng-Hee's Third Republic. However, this brief period did not lead to concrete policies regarding culture and it was quickly substituted by an authoritarian military regime.

³⁸⁵ For more information regarding both liberalization and censorship of Roh's media industry, see Mi-Sook Park, "South Korea Cultural History Between 1960s and 2012," in *How "Hallyu" Outcome in Asia Since the Early of 2000s* (PhD. diss., University of Sheffield, 2014), 92.

which was further developed by Kim Youngsam (1993-1997) and his “*Segyehwa*”³⁸⁶ (literally: globalisation) politics.

3.1.2. Nationalism

Korean cultural heritage and the intangible cultural expressions have been a useful tool in order to affirm a stronger sense of identity on the peninsula, especially during the nineteenth and twentieth centuries. In fact, during these periods Korea was characterized by the illegitimate interferences of foreign interests in the region, which preceded Japanese colonization (1910-1945). However, the peninsula was not new to foreigners’ aggressions, because since ancient times the peninsula had suffered from various intrusions, especially from neighbouring Chinese and Japanese regions. In 1592, the Japanese invasion, followed by the Chinese one in 1627, had given rise to the *Silhak* movement (literally: “practical learning”), which can be considered the first Korean nationalist movement. The *Silhak* movement introduced the first new ideas of a more modernized administration. Based on the comparison with the Qing Empire (1644-1911), *Silhak* thinkers proposed some ways to modernize the peninsula, which were strongly against what they referred to as the “parasitic life of the *yangban*,”³⁸⁷ thus against the neo-Confucian social status system utilized until that time.

Caused by the strong pressure from outside forces, critical economic status, and problematic social situations Chosŏn was facing, new thinkers advocated for a “Korean-oriented self-interest”³⁸⁸ way of confronting the kingdom’s issues, abandoning the Chinese legacy.

The rising need to modernize the nation was passed on from the *Silhak* movement to the following nationalist movements, such as the later: Modern Nationalistic Reform Movement of 1880 and the Party of Enlightenment and Progress.³⁸⁹ In Korea, nationalism emerged with the arrival of foreign ideas and the inclusion of Korea in the world system, thus, by the end of the nineteenth century, the quest for modernization had commenced. These new modern ideas tried to change the kingdom’s social system and to encourage an open-door attitude. In addition, a new interest in the rediscovery of traditional Korea³⁹⁰ emerged; a scholarship known as the “enlightenment thought”³⁹¹ was at the root of new scholarly interests

³⁸⁶ In Korean: 세계화.

³⁸⁷ Ki-Baik Lee, *A New History of Korea*, trans. Edward W. Wagner and Edward J. Shultz (Cambridge, Massachusetts: Harvard University Press, 1984), 236.

³⁸⁸ Andrew C. “Nahm, Korean Nationalism: Its Origins and Transformation,” *Korea Journal* 23, n.2 (February 1983), 20.

³⁸⁹ In Korean: 開化黨, kaehwadang.

³⁹⁰ This interest in traditional Korea appeared at the end of the Yi or Chosŏn dynasty around 1908, after varied fields of human knowledge were investigated in the previous decades. For more information, see Ki-Baik Lee, *A New History of Korea*, trans. Edward W. Wagner and Edward J. Shultz (Cambridge, Massachusetts: Harvard University Press, 1984), 255.

³⁹¹ Ki-Baik Lee, *A New History of Korea*, trans. Edward W. Wagner and Edward J. Shultz (Cambridge, Massachusetts: Harvard University Press, 1984), 255; 開化思想, *kaehwa sasang* in Korean.

and research. However, with new ideologies and the will to modernize the country, tradition was often put aside and substituted by the “urban and modern.”³⁹² This trend also characterized the Korean peninsula with an urgent change, when the kingdom was invaded by the Japanese and transformed into a protectorate.

The new “civilization” concept coming from the West, characterized the discourse on national identity starting from the nineteenth century. Two main trends, pan-Asianism and nationalism,³⁹³ could be found on the peninsula. After 1905 and the cession of the Korean kingdom to Japan, the issue became even more prominent; pan-Asianism was clearly discharged because of the current situation and nationalists tended to establish a stronger national identity. In this context, the desire to construct a Korean history can be clearly understood, also using the Tangun myth, and basing the foundation of the Korean nation back to this mythical character (around 4000 years ago). Korean national identity opposes the oppressors’ foreign cultures (Chinese, Japanese, and Western), with the primary objective of defending the existence of a “Koreaness” that was still yet to come.

Japanese colonization had incessantly tried to uproot Korean traditions, starting from the religious aspect (shinto instead of neo-confucianism), they imposed the Japanese system and pronunciation of Korean names, thus, eradicating the Korean *hangŭl* alphabet and language, which were prohibited until the end of the Second World War.³⁹⁴ However, Korean people pursued trying to maintain, mostly in secrecy, their traditional culture and expressions in daily life. This determination was testified by the establishment of societies, such as the Self-Production Society, the Women’s Association for the Usage of Native Products, the Society for the Encouragement of Native Products,³⁹⁵ the Foundation of the National University and, in order to maintain the usage of *hangŭl* alive, the establishment of the Korean Language Research Society.³⁹⁶ All of these initiatives should have fostered Korean identity and raised awareness about national consciousness, in contrast with the one injected by local authorities. This upsurge in safeguarding folk traditions had already been manifested during the Chinese invasion at the end of the XIX century. The *Tonghak* movement, literally “Eastern learning,” was the first large-scale movement, which developed into

³⁹² Gi-Wook Shin, *Ethnic Nationalism in Korea: Genealogy, Politics, and Legacy* (California: Stanford University Press, 2006), Kindle 1754.

³⁹³ Gi-Wook Shin, *Ethnic Nationalism in Korea - Genealogy, Politics, and Legacy* (Stanford California: Stanford University Press, 2006), Kindle 500-505. In his book, the author sustains the division of Korean intellectuals, who fostered Korean identity before and during Japanese colonization into two separate groups: pan-Asianism and nationalism. The latter “regarded nation, not race or region, as the basis for a new, modern Korean identity.”

³⁹⁴ See Michael J. Seath, *A History of Korea - From Antiquity to the Present* (Plymouth, UK: Rowman & Littlefield Publishers Inc., 2011), 296-297.

³⁹⁵ Andrew C. Nahm, “Korean Nationalism: Its Origins and Transformation,” *Korea Journal* 23, n. 2 (February 1983): 28.

³⁹⁶ Gi-Wook Shin, *Ethnic Nationalism in Korea: Genealogy, Politics, and Legacy* (California: Stanford University Press, 2006), Kindle 644.

a form of religion. It used traditional shamanic cultural forms in order to contrast the Chinese and Japanese interests on the peninsula.

However, from 1905 onwards, nationalism was characterized by a strong sense of modernization and tried to reject Korean cultural traditions. This trend changed in the late Twenties, when Japanese assimilation was even more fierce and Korean nationalists tried to revitalize Korean traditions, which were endangered by the increasing control of the colonizers. Moreover, since their occupation, the Japanese authorities had fostered the unity of Korean and Japanese people under the same ethnic race, the same ancestry. For this reason, they undertook the study of ancient Korean relics and traditional culture since the occupation, with its nadir in 1916. In addition, they studied the promulgation of *Chōsen Sōtokufu*³⁹⁷ cultural preservation laws and regulations, the one-year anniversary of the National Museum of Korea,³⁹⁸ and the establishment of the Office of the Governor-General of the Department of Religion and the Department of Research and National Treasures in 1919. Archeological finds should have justified the aggressive imperialism over the previous kingdom and the violent cultural oppression. Here it is evident how cultural heritage was used both by Koryo people in order to foster the peninsula's independence from foreign aggressions and declare independence, as well as by the Japanese to support the idea of a common cultural and ethnic lineage³⁹⁹ throughout the whole empire. Not only tangible cultural heritage went under the increasing Japanese interest, but also Shamanic expressions constituted a relevant element in the cultural assimilation agenda, as Japanese considered Shamanism a useful support for their *nissen dōsorōn*⁴⁰⁰ theory and for the acceptance of Shintoism on the peninsula.⁴⁰¹ In this historical context, Korean nationalism is here referred to as “cultural nationalism,”⁴⁰² which will be characterized by a more ethnic focus in the Thirties, concentrating on creating a Korean identity based on national spirit and rediscovery of past cultural traditions. This time traditional expressions were regarded as positive elements in the nation's construction, in contrast with the previous nationalists' view which advocated for modernization and criticized traditional culture.

³⁹⁷ In Japanese: 朝鮮總督府.

³⁹⁸ Il-Pai Chung, “The Colonial Origins of Korea's Collected Past,” in *Nationalism and the Construction of Korean Identity*, ed. Il-Pai Chung and Timothy R. Tangherlini (Korea Research Monograph n. 26, 1998), 16.

³⁹⁹ The theory of the *nissen dōsorōn*, Gi-Wook Shin, *Ethnic Nationalism in Korea: Genealogy, Politics, and Legacy* (California: Stanford University Press, 2006), Kindle.

⁴⁰⁰ In Japanese: 日鮮同祖論. This theory sustained Japanese expansionism before the end of the Second World War, especially in Korea, where the annexation was legitimized by common racial origins of the two regions. For more information, see Hyung Il Pai, “Nation, History, and Politics: South Korea,” in *Nationalism and the Construction of Korean Identity*, ed. by Hyung-II Pai and Timothy R. Tangherlini (Berkeley: Korea Research Monograph, 1998), 15, and Michael Weiner, *Race, Ethnicity and Migration in Modern Japan* (London: Routledge, 2004), 102.

⁴⁰¹ Gi-Wook Shin, *Ethnic Nationalism in Korea: Genealogy, Politics, and Legacy* (California: Stanford University Press, 2006), Kindle 625.

⁴⁰² Michael Robinson, “National Identity and the Thought of Sin Ch'ae-Ho,” *Journal of Korean Studies* 5, (1988): 121-142.

Together with the strive for independence, nationalist movements also flourished mostly in secrecy, such as the League for National Restoration. Ethnic nationalism was enforced by the case of Koreans-Manchuria, an aggression to the Koreans working in the Manchuria region, who were often ostracized because of their ethnic origins. This represents an important case, where both nationalists and communists' views contrasted, thus anticipating the later liberation division and also influencing Kim Il-Sung's perspective on the internationalisation of the Communist Party. In addition to the Chinese reaction, ethnic nationalism also emerged in response to colonial racism led by Japanese troops and authorities in the Korean Peninsula. It is important to cite the ethnic nationalists' efforts, because they were the ones who focused on cultural aspects typical of Korean civilization. Cultural and spiritual aspects were supported in order to combat Japanese-led racism, on the other hand Korean Communists focused on social and political aspects.⁴⁰³ Forms of ethnic nationalism will be transmitted in the following post-colonial period, in both North and South Korea, which will then be manifested through different means: in the North, through the *juche*⁴⁰⁴ ideology in a Marxist-Leninist system, and in the South, fascist-like authoritarian regimes prevailed and ethnicity became part of various presidents' agendas.

With the new Korean division and the two separate governments, cultural ethnicism became a tool for reunification, advocating to unify the two countries in culture, history, language, and ethnicity. This concept could be well-summarized by Rhee's article entitled "What is *Ilmin Chui*?"⁴⁰⁵ where the "one nation" concept is underlined. This same political ideology will be furthered by his successor, Park Chŏng-Hŭi. During Park's military regime, modernization and development of the South Korean nation was the central focus, however, these objectives should have been obtained maintaining particular cultural traditions, which distinguished Korea from other countries,⁴⁰⁶ thus, launching the rediscovery of the national spirit and wisdom, namely: culture, heritage, and indigenous identity. The government's interest was not expressed only through propaganda, but in the public expenditure as well, in fact, between 1974 and 1978, the government spent 70% of total public expenditure in the field of folk and traditional culture.⁴⁰⁷ The crisis in the Seventies, which was connected to international events occurring especially in Southeast Asia, called

⁴⁰³ Gi-Wook Shin, *Ethnic Nationalism in Korea: Genealogy, Politics, and Legacy* (California: Stanford University Press, 2006), Kindle 1046.

⁴⁰⁴ *Juche*, in Korean 주체, is a religious ideology used when referring to North Korea ideology. Its origins can be found in the words pronounced by Kim Il-Sung (1912-1994), the founder of the Democratic People's Republic of Korea, who wanted to find an alternative ideology to Marxism-Leninism for North Korea. It is based on three main principles: independence, construction of national economy, and self-defence.

⁴⁰⁵ Gi-Wook Shin, *Ethnic Nationalism in Korea: Genealogy, Politics, and Legacy* (California: Stanford University Press, 2006), Kindle 1359.

⁴⁰⁶ Chung-Hee Park, *Saemaul: Korea's New Community Movement* (Seoul: The Secretariat for the President, Republic of Korea, 1979).

⁴⁰⁷ Haksoon Yim, "Cultural Identity and Cultural Policy in South Korea," *The International Journal of Cultural Policy* 8(1), (2002), 37-48.

for the strengthening of national identity and consciousness, in this sense there was a revitalization of indigenous culture and identity, which were instrumental to government control over the population and over the already oppressed political parties. Cultural policies and national identity are, thus, strongly connected, as the above sections also state.

Japanese colonization, westernization, and the two Koreas' division have clearly challenged the transmission and valorization of traditional culture, especially in the southern part of the peninsula. For this reason, the successive governments during the second half of the twentieth century put particular attention on the reshaping of Korean cultural identity. While the country was setting up a larger international system for industrial development, South Korea understood that the enhancement of traditional culture and identity would also help global competition in the cultural industry.

Chun Do-Hwan followed the politics initiated by his predecessor, focusing on public subsidy and expanding to other cultural sectors. "Establishing cultural identity" remained one of the five main points in both of his junta's cultural policies ("The New Plan for Cultural Development" and "The Cultural Plan in the Sixth Five-Year Plan for Economic and Social Development"). The language of "cultural ethnicity" was carried out in Roh Tae-Woo's presidency. In addition, cultural identity and ethnic reunification were added to the cultural policy list of major objectives. It was the first time since the division that the two Koreas' ethno-cultural legacy had been fostered through national support. National unity was not possible from a political and ideological perspective; however, the two Koreas could count on a common cultural heritage between the two communities. For this reason, Roh's "7.7 Special Declaration" called for the constitution of a national Korean community and it was followed by a comprehensive integration of the cultural reunification project inserted in the cultural policies.⁴⁰⁸ From this moment onwards, cultural identity ceased to be a pure instrument to strengthen the South Korean regime like in the previous presidencies and a tool for national propaganda strongly opposed to foreign, as well as communist driven forces. On the contrary, the open-door policy initiated by Roh's government, started a new period in the globalisation of South Korean culture.

The Korean concern for the protection and preservation of ICH along with its main bearers arrived earlier than in most Western countries. This is most likely due to the more intangible nature of Asian countries' heritage and the perishable character of the majority of its material heritage (for example, wooden structures); however, it should also be noted that the constant struggle against foreign colonists on the peninsula had fostered a considerable search for cultural identity, which was made concrete by Korean

⁴⁰⁸ Hak-Soon Yim, "Cultural Identity and Cultural Policy in South Korea," *The International Journal of Cultural Policy* 8 (1), (2002), 42; Roh Tae Woo's government "ten years plan for cultural development" (1990) included the reunification of cultural actions.

cultural heritage. Thus, cultural and ethnic nationalism played a major role in the rediscovery and reshaping of folk traditions. Presidents and governments often used intangible cultural heritage and its representatives (living human treasures), in order to sustain political actions, making use of ancient history and culture, and the idea of Korean ethnic unity as a symbol of a culturally unified nation. Political actors had in fact understood that, in order to keep the nation united and to preserve their power, citizens should recognise themselves as part of a specific national identity. From this perspective, the government became interested in the protection and safeguarding of *inganmunhwajae*,⁴⁰⁹ people who had before been considered negligible when compared to the long-awaited modernization. Shamans, dancers, and artisans embodied Korean culture's unique characteristics and traits, which distinguished Koreans from the Japanese and Chinese. This would soon disappear under the pressure of modernization and the infiltration of Western countries' cultural assets. The main government project to foster Koreans' national identity was enhanced by the enactment of the CPPL and the recognition of relevant intangible cultural heritage and their transmitters. This is the main reason why it is important to consider the ethno-cultural nationalism⁴¹⁰ matrix when introducing South Korea's living human treasures system.

3.1.3. Korean Folklore

The Korean Folklore Scholarship represented one of the main academic instruments that supported rising nationalism, which appeared on the peninsula before Japanese colonisation, through the study of folk traditions. This accelerated the reshaping of Korean culture and the rediscovery of folk traditions. It is important to trace back the origins of folklore studies because during the Sixties and Seventies the government widely used the information gathered by folklorists and scholars in order to carry out the CPPL designation for the protection and safeguarding of ICH and LHT. In Korea, the first steps in documenting traditional cultural expressions started even before independence, an undeniable primacy that was decades away from the still remote 1989 UNESCO Recommendation, which would set the foundations for the safeguarding of folk expression memory.

Some experts, mainly In Kwon-Hwan, supports the idea that there is an indigenous origin of folklore scholarship in the *Silhak* movement, which flourished in the 17th and 18th centuries.⁴¹¹ However, it is widely recognised that modern folklore scholarship started during Japanese colonisation's second and third decades. The most important folklorists of that period are, respectively: Ch'oe Nam-Son (1890-

⁴⁰⁹ Meaning: living human treasures.

⁴¹⁰ As defined in David Brown, *Contemporary Nationalism: Civic, Ethnocultural and Multicultural Politics* (London: Routledge, 2000).

⁴¹¹ Roger L. Janelli, "The Origins of Korean Folklore Scholarship," *The Journal of American Folklore* 99 (391), (Jan-Mar: 1986), 25. Some others even consider Monk Iryŏn as a predecessor of 20th century folklorists, due to his exemplary work in collecting oral traditions in contrast to Mongol cultural dominance.

1957),⁴¹² Yi Nung-Hwa (1868-1945),⁴¹³ Son Chin-T'ae (1900-1950),⁴¹⁴ Song Sok-Ha (1904-1948),⁴¹⁵ and Yim Suk-Jay (1903-1998),⁴¹⁶ who will strongly influence the ones to come. All of the folklorists during this period can also be defined as cultural nationalists, in fact, with the Japanization during the Colonial Period (1910-1945), there was no distinction between folklore and the strive for affirmation of cultural nationalism and Korean cultural identity. Folklorists scholarized the rebellion against cultural assimilation propelled by Japan through studying popular traditions.

The study of Korean shamanism characterized all first folklore works. All the above-mentioned scholars thoroughly discussed shamanism as a unique cultural expression of Korean identity, which for some has continental Asian origin,⁴¹⁷ thus detached from Japanese influence. Together with shamanism, Ch'oe Nam-Son, Yi Nung-Hwa, and Son Chin-T'ae were also extremely interested in drafting Korean history, which was another aspect strongly influenced by Japanese presence on the peninsula.

Son Chin-T'ae's working methodology is regarded as one of the most modern and complete ones. He included a large variety of documents coming from many different countries and his systematic recording of both tales and sources represents a precious source of information.⁴¹⁸

On the other hand, Song Sok-Ha and Yim Suk-Jay introduced the collection of folk materials for the first time in order to be protected, especially from Japanese expropriation and vandalisation. They also organized exhibitions and publicized the items through mass media and newspapers articles. The first collection of folk materials was exhibited in the National Ethnological Museum of Korea,⁴¹⁹ which was founded by Song Sok-Ha in 1946, just after national Korean liberation. Song was concerned with the appropriation of Korean ethno-cultural goods by the Japanese, for this reason he started to rescue as many tools as he could. However, he should also be remembered for his performance-based concept of folklore, which depicts him as precursor of the later framework in folklore studies based on action⁴²⁰ and placing performance at the centre of the research. Yim Suk-Jay also had an important role in the preservation of folk traditions. His view of shamanism was different from other folklorists, such as Yi Nung-Hwa or Son Chin-T'ae. However, he should be remembered for his role in drafting the CPPL, which was in fact

⁴¹² In Korean: 崔南善.

⁴¹³ In Korean: 이능화, 李能和.

⁴¹⁴ In Korean: 孫晉泰.

⁴¹⁵ In Korean: 宋錫夏.

⁴¹⁶ In Korean: 任哲宰.

⁴¹⁷ The only folklorist who had a different view on the origin of shamanism was Yim Suk-Jay. In fact, he considered *gut* (Korean shamanism) to be a Korean indigenous religion (namely, *muism*).

⁴¹⁸ James H. Grayson, "Son Chin-T'ae and the Foundations of Modern Korean Folklore Studies," *Folklore* 129:1, (March: 2018), 1-2.

⁴¹⁹ In Korean: 국립 민속 박물관 *Gungnip Minsok Bakmulgwan*.

⁴²⁰ Jong-Sung Yang, *Cultural Protection Policy in Korea: Intangible Cultural Properties and Living Human Treasures* (Seoul: Jimoodang, 2003), 23. Here referring to the school of performance-centered folkloristics by Alan Dundes, Americo Parades, and others, all listed by Yang.

suggested by him. He was part of the committee for the designation of ICH items, as well as a member of the National Folk Arts Contest⁴²¹ (1958), a performing arts contest, which considerably helped the revitalization of national traditional expressions.⁴²²

In Korea, folklore studies had a double role: firstly, during Japanese colonisation, it supported the nationalist struggle against invaders at a theoretical level through the creation of a national identity, identified in shamanic religion and practices. After liberation and the division of the peninsula, southern folklorists such as Song Sok-Ha and Yim Suk-Jay initiated the studies with the establishment of the National Ethnological Museum of Korea, the participation in the Korean Alpine Federation (1945),⁴²³ and the foundation of the Korean Folklore Society in 1960.⁴²⁴ Yim Suk-Jay participated in the writing process of the CPPL and was appointed on the committee for the selection of ICH items. He should also be remembered for encouraging the constitution of the Asian Comparative Folklore Society in 1983, which still exists today,⁴²⁵ and for participating in the foundation of the Korean Cultural Anthropology Society. Thus, the second role of folklore was in the service of state-led initiatives, such as the CPPL, as well as the collection and preservation of folklore items and data.

Section 2: Rok National Legislation

3.2.1. Cultural Property Protection Law (1962)

During Park Chŏng-Hŭi's regime, great attention was put on the preservation of Korean cultural heritage and traditional expressions. With the help of folklorists like Yim Suk-Jay, on January 10, 1962 the government enacted the Cultural Properties Protection Act with act n. 961, a resolution for the safeguarding of cultural properties, after a decade of discussions and with the replacement of the 1945 Old Palace Property Disposal Law and Old Royal Family's Property Law⁴²⁶. The CPPL follows the Japanese model of

⁴²¹ *Jeon-Guk Nibsik Yesul Gyeong-Yeon Daehoe*.

⁴²² Jong-Sung Yang, *Cultural Protection Policy in Korea: Intangible Cultural Properties and Living Human Treasures* (Seoul: Jimoodang, 2003), 28-29.

⁴²³ *Joeseon Sanhakoe*.

⁴²⁴ There was a Korean Folklore Society also during the Colonial Period, which should be differentiated from the one founded after independence.

⁴²⁵ The society's website can be consulted at the URL: "Asian comparative folklore society homepage," Asian Comparative Folklore Society 比較民俗學會, accessed June 19, 2018, <http://www.bigyominsok.org/modules/doc/index.php?doc=intro>.

⁴²⁶ Seong-Yong Park, *On Intangible Heritage Safeguarding Governance*, 96.

the Act for the Protection of Cultural Properties, amended on May 30, 1950 through act n. 214.⁴²⁷ The Japanese Temple Act, promulgated in 1911 under colonisation, initiated the first legislative measures to safeguard traditional culture, an important task also for colonizers who, however, focused on the preservation of tangible cultural heritage and the systematic substitution of Korean traditional culture with the Japanese one.

The original text has been enforced several times, the last amendment was in March 2018. The progressive aspect of the legislation is thought in order to revise the original text and to fix ongoing problems in preservation and administration of heritage⁴²⁸. The text is divided into seven chapters, respectively:

- general provisions;
- state-designated cultural properties;
- buried cultural properties;
- special provisions concerning state owned cultural properties;
- city or province designated cultural properties;
- supplementary provisions;
- penal provisions.

In general provisions, the act refers to the main objective of the regulation, useful definitions in order to determine the properties to be considered, and the establishment of the cultural properties committee. It is interesting to note that the main purpose of this legislation resides in the cultural advancement and improvement of all people through the preservation and use of cultural properties⁴²⁹. Thus, referring to cultural properties as tools for the nation's social development, in this way declaring the necessity of advancement without losing Korean cultural specificity. The words used in these opening few lines of the act are all active words, which give the idea of moving forward. The only exception is the word "preserving"⁴³⁰, the only stative word that also underlines the need to conserve culture intact and unaltered. Under this law, the properties considered for protection are differentiated into four categories: tangible, intangible, monuments, and folklore materials. This section will concentrate on intangible properties as well as folklore materials, as these two categories represent the objects of interest for this research.

⁴²⁷ Jong-Sung Yang, *Cultural Protection Policy in Korea*, 34.

⁴²⁸ Jong-Sung Yang, "Korean Cultural Property Protection Law with Regards to Korean Intangible Heritage," *Museum International* 221-222 vol.56, (2004), 185.

⁴²⁹ Cultural Property Protection Act, Amend. Law n.3644 (Dec. 31, 1982), art.1.

⁴³⁰ In the Korean text, the verb used is: *pochonhada* 보존하다, from the Chinese characters 保存 (bǎocún), literally "protect the existence." *Pochonhada* 보존하다 is usually used when referring to material heritage, meaning the preservation or conservation of material things. On the contrary, *pohohada* 보호하다, from the Chinese 保護 (bǎohù), is used in relation to intangible heritage, meaning protection. See Jong-Sung Yang, "Korean Cultural Property Protection Law with Regards to Korean Intangible Heritage," *Museum International* 221-222 vol. 56, (2004), 181.

Concerning the intangible cultural properties category,⁴³¹ the law considers: music, drama, dance, craftwork technique, and intangible cultural expressions. Moreover, the folk materials enumerated also shows an interest in religious and annual events, as well as public morals and customs related to food, clothing, housing, and occupation. Attention to folk traditions represents a distinctive trait of the Korean Preservation Act, which was absent from Japanese legislation until 1975, when folk cultural expressions were added to the Law for the Protection of Cultural Property through an amendment.⁴³² The group of items under national protection can be considered as inclusive as the one proposed in the 2003 UNESCO ICHC, with the addition of religious expressions excluded from the convention text.

Holders of important intangible cultural heritage appear in the designation process under Chapter 2. It is in fact mandatory for the Minister of Culture, Tourism and Sport⁴³³ to designate a holder once an ICH item has been nominated as national property (art. 5). This section clearly delineates the designation, notification, and cancellation of an item and bearer. The whole process is definite: once an item has been nominated, the committee shall recognise a holder (art. 5.2). The Ministry is in charge of the announcement, which notifies owner/holder and publishes the new nomination on the Official Gazette (art. 9); a certificate attesting the nomination shall be issued by the Minister and delivered to the transmitter (art. 10.2), who becomes holder from the moment of communication by the competent authority (art. 11). Cancellation may occur for different reasons: firstly, when the cultural expression has lost its value; secondly, for lack of the owner's competence; lastly, in case of the owner's death. For the latter case, when no other holder is identified, the item "shall be regarded as cancelled"⁴³⁴ (art. 12.3). This procedure testifies the importance assigned to human transmission of important cultural traditions and reconfirms the human-centered vision of ICH. The procedure for cancellation of the holder title has been inserted in the 2008⁴³⁵ text, an important addition which provides guidelines for the observance of the rules attached to the designation. In 2018, the Republic of Korea included 169 recognised holders (poyuja 보유자), 66 groups of important ICH element holders (poyudanch'e 보유단체), and 16 honorary holders (myōngge poyuja 명예보유자).⁴³⁶ The latter title was approved since the enforcement of the 2001 amendment⁴³⁷ and it is recognised among holders who cannot transmit knowledge anymore due to physical problems and ageing.⁴³⁸

⁴³¹ In Korean: 무형문화재, from the Chinese: wúxíng wénhuàcái 無形文化財.

⁴³² Noriko Aikawa-Faure, "Excellence and Authenticity," 39.

⁴³³ In the 1962 original text, the Ministry of Culture, Tourism and Sport was called Ministry of Education.

⁴³⁴ Cultural Property Protection Act, Amend. Law n. 3644 (Dec. 31, 1982), Art.12.3.

⁴³⁵ Inserted with the Presidential Decree n. 21046 in September 2008, and further amended in 2011 (art. 18) and 2014 (art.18).

⁴³⁶ Data was collected from the Ministry of Culture, Sport and Tourism, at the following link: "Gukkamuhyōngmunhwajae T'ongkye 국가무형문화재 통계," National Intangible Heritage Centre, accessed June 19, 2018, http://www.nihc.go.kr/nihc/home/cop/bbs/selectBoardList.do?bbsId=BBSMSTR_000000000106&mn=KO_02_04.

⁴³⁷ Seong-Yong Park, *On Intangible Heritage Safeguarding Governance* (Newcastle Upon Tyne: Cambridge Scholars Publishing, 2013), 97. The amendment was inserted by Act n. 6443, March 28, 2001.

⁴³⁸ Jong-Sung Yang, "Korean Cultural Property Protection Law," 183.

Intangible cultural properties management falls under article 24. General provisions, however, are provided in the previous articles, where the Ministry of Culture, Sport, and Tourism is granted the establishment of necessary instructions for property management. The owner may be identified with a holder, a managing body, a local government, or another adequate juristic person/body (art. 16). As for article 24, it reaffirms the duty of the state to “protect and nurture” ICH in order to keep on transmitting and developing traditional culture: the transmission should also be nurtured because of the holder’s training, which the state shall directly and indirectly finance (art. 24.3 and art. 28.10.4) along with recognition of national interest through issuing study grants (art. 24.4). Through this management system, the state tries to foster education in the field and promote younger generations’ interest, as well as stimulate bearers’ involvement. A National Intangible Heritage Center (October 2013)⁴³⁹ as well as the Korea National University for Cultural Heritage⁴⁴⁰ were founded in order to foster ICH education and encourage young people to learn traditional techniques and knowledge.

Holders’ duties are imposed by law and can be found throughout the text: transmission of ICH (art. 24.2); the presentation of traditional cultural expressions to the public, at least once a year (art. 36), in order to make the people aware of the importance of transmission and preservation of ICH; negligence shall be punished with a fine (art. 93.1); moreover, owners shall report the property condition to the state (art. 40). Concerning folk materials, the objects cannot be traded except for those receiving permission from the Ministry of Culture, Tourism, and Sport (art. 61).

The identification of ICH and the appointment of living national treasures are tasks assigned to the Cultural Properties Committee (art. 3), which is divided into subsections including one for intangible heritage in charge of designation. The committee is composed of a total of 60 members, which are divided into two categories: committee members and technical ones, who stay in charge for two years⁴⁴¹. Complete autonomy is granted and the committee can implement its work without governmental interference. Different titles can be given to bearers, respectively (in order of importance): honorary holder, holder, assistant instructor, master artist, and trainee. Transmission and education were made mandatory in 2008 and they also represent one of the main objectives of holders, with the risk of losing the title if not compliant to pass on knowledge to new bearers.⁴⁴² Education is tightly linked to transmission, in fact, once a student holds a certificate of completion he or she may start to transmit knowledge. Thus, it has been important to

⁴³⁹ This information was provided by the Republic of Korea Cultural Heritage Administration on the following website: “History,” Cultural Heritage Administration, accessed June 19, 2018, http://english.cha.go.kr/html/HtmlPage.do?pg=/aboutCha/history.jsp&mn=EN_04_04.

⁴⁴⁰ By Presidential Decree 14982, April 19, 1996. The Korea National University for Cultural Heritage opened in 2000.

⁴⁴¹ Jong-Sung Yang, “Korean Cultural Property Protection Law with Regard to Korean Intangible Heritage,” *Museum International* vol. 56 n. 1-2, (2004), 183.

⁴⁴² Presidential Decree n. 21046, 26 Sep. 2008, art. 3.4.

regulate the issuance of certificates since 2003, with the addition of Presidential Decree n. 18026 (Jan. 27, 2003) and with more stringent rules enforced in 2008.⁴⁴³

In the 1983 amendment, recognition of scholarship to apprentices was added to the law's text, with further amendments in 1990, 1993, 1994, 1999 (art. 20), 2008 (art. 26), 2011 (art. 27), and 2014 (art. 27). The recognition of the diploma and skills acquired by students who have received the apprenticeship are judged by holders and holding organizations, as stated on the Presidential Decree n. 16413 in 1999, and amended in 2003 and 2008.

In 1999, the Cultural Heritage Administration was set as a sub-ministerial agency, previously under the Ministry of Culture and Tourism as the Cultural Properties Management Bureau, first established in 1961.⁴⁴⁴ Since 1999, the administration is in charge of management, promotion, conservation, and policy to be adopted for safeguarding and transmitting Korean cultural properties. Since the CPPL's enforcement until the Act on the Safeguarding and Promotion of Intangible Cultural Heritage in 2016, it has been analyzed that no community consent or involvement are due and the process is mostly top-down driven, with little involvement from the local community. Individual performers or groups may present themselves as holders of an important, national cultural tradition, and ask for an investigation by the cultural heritage administration, however no further engagement or consent are required. Holders have duties to accomplish, in order to maintain their status, but they are also granted a monthly allowance and social status raise.

In the CPPL, there is no reference to intellectual property rights, a lack which has been reconsidered in the following 2015 legislation and was likely due to wide ranging protection assured by law, which comprises all kinds of heritage (material, immaterial, and people owned knowledge).

3.2.2. Act on the Safeguarding and Promotion of Intangible Cultural Heritage (2015)

The process for the drafting of a new law, detached from the CPPL and focused on the protection of intangible cultural heritage, had already started in 2013. The new act (n. 13248) on safeguarding and promoting ICH was enacted on March 27, 2015 and entered into force on March 28, 2016. The national efforts made to safeguard ICH and foster transmission of important knowledge led to the approval of legislation improvement, which stressed the importance of immaterial heritage for South Korea. The new enactment also reflects a major concern over a larger group of ICH items and follows the example of other

⁴⁴³ Presidential Decree n. 21046, 26 Sep. 2008, art. 24.

⁴⁴⁴ "Cultural Heritage Charter, December 2016," Cultural Heritage Administration, accessed June 19, 2018, http://116.67.40.25/NEW_PDF/20110315.pdf.

international instruments, such as the UNESCO 2003 Convention.⁴⁴⁵ At the international level, South Korea has always distinguished itself for its advanced system for safeguarding traditional culture, initiated with the CPPL in 1962. The new law is representative of Korean pride in the development of such a prolific and well-organized system, which was also proposed for a nomination inside the UNESCO ICH lists. In fact, in 2012 a nomination file for the addition of “Korea’s programme for documenting ICH” into the world heritage list of the UNESCO ICH items was submitted.⁴⁴⁶

The act is divided into ten chapters, respectively:

- general provisions;
- formulation and promotion of policies on intangible cultural heritage;
- designation, etc. of national intangible cultural heritage;
- recognition of holders, group holders, etc.;
- successor training and public presentations;
- city/do intangible cultural heritage;
- promotion of intangible cultural heritage;
- implementation of UNESCO convention;
- supplementary provisions;
- penalty provisions.

The text consists of 58 articles in total, which clearly and precisely provide criteria, definitions, purposes, responsibilities, and other details for the recognition of ICH and living human treasures. The document has been enforced three times, the last one in 2017 through Presidential Decree n. 27992 on April 18, 2017.

The new legislation draws on the UNESCO 2003 Convention, looking at the international developments in the safeguarding intangible heritage field. More inclusive scopes and values are included in the new legislation. In addition, there is a more diversified range of categories, in order to encompass more items⁴⁴⁷ that were previously discharged. For instance, this new legislation allows for the possibility to designate

⁴⁴⁵ “Korea Enforces New Law for Safeguarding and Promoting Intangible Cultural Heritage,” ICH Courier Online, accessed June 19, 2018, <http://ichcourier.ichcap.org/en/korea-enforces-new-law-for-safeguarding-and-promoting-intangible-cultural-heritage/>. It should also be noted that in the new act there is a specific chapter specifically dedicated to the relationship between this instrument and the UNESCO one.

⁴⁴⁶ The nomination can be seen on the UNESCO ICH website, under the Republic of Korea: “Republic of Korea,” ICH UNESCO, accessed June 19, 2018, <https://ich.unesco.org/en/state/republic-of-korea-KR>.

⁴⁴⁷ Jung-Eun Park, “Diverse Values of Intangible Heritage - A Comparative Perspective on the 2003 Convention and the New Intangible Heritage Safeguarding Law of South Korea,” *Korean Journal of Intangible Heritage* 3, (December, 2017), 226-241.

ICH without holders nor holders' group, such as: *Arirang*, folk song;⁴⁴⁸ *Cheda*, traditional tea making;⁴⁴⁹ *Ssireum*, Korean wrestling;⁴⁵⁰ *Haenyeo*, Korean female divers;⁴⁵¹ *Sonjajang*, fan making.⁴⁵²

The first chapter provides general information, goals, and responsibilities. Article 1 outlines the main purposes of the act, which puts citizens in first place, in contrast with the CPPL where the nation came first, a clear reflection of the long-lasting national constraint under foreign occupation and the progressive construction of specific Korean national identity through all the twentieth century. In comparison to the previous CPPL's many critiques due to its rigidity in fostering new expressions of ICH, the new legislation shall foster the creative transmission of traditional culture,⁴⁵³ thus indicating more space for individual decisions, a national choice which is also reflected in Mun Jae-In's newly released, five-year administration plan.⁴⁵⁴ The last scope is to enable "the citizens to utilize such traditional culture through the safeguarding and promotion of intangible cultural heritage," which shall foster citizens' involvement. This engagement policy was first fostered in the Eighties with *ad hoc* policy measures,⁴⁵⁵ but it is proposed again here including traditional culture as a more accessible asset.

The legislation also provides a clearer definition of the different titles and terms used in the field of intangible cultural heritage, respectively: holder, honorary holder, group holder, assistant instructor, certified trainee, successor, successor training, traditional craft product, and living human treasure. These terms are identified and described in order to clarify the words used and the value attached to every nomination, thus, also reducing the volatile or unclear aspect often attached to such a difficult task, when defining ICH. Further explanation is provided in the following amendments as well.⁴⁵⁶

Concerning the definition of intangible cultural heritage, the text indicates the one provided in the CPPL as reference, however no details are specified in order to identify ICH in need of urgent safeguarding, which can be selected between designated items and it is simply determined by the danger of disappearance.

⁴⁴⁸ In Korean: 아리랑.

⁴⁴⁹ In Korean: 차다.

⁴⁵⁰ In Korean: 씨름.

⁴⁵¹ In Korean: 해녀.

⁴⁵² In Korean: 선자장.

⁴⁵³ The politics of creativity is not new to the Republic of South Korea, in fact, the ROK government already had already fostered the creative spirit of Korean citizenship in the Seventies, in order to contrast with foreign ideas capitalizing on people's lives. For more information, see Hak-Soon Yim, "Cultural Identity and Cultural Policy in South Korea," *International Journal of Cultural Policy*, 8:1, (2002): 45.

⁴⁵⁴ "100 Policy Tasks - Five-year Plan of the Moon Jae-In Administration," The government of the Republic of Korea, accessed June 19, 2018, www.president.go.kr.

⁴⁵⁵ Hak-Soon Yim, "Cultural Identity and Cultural Policy in South Korea," *International Journal of Cultural Policy*, 8:1, (2002): 45.

⁴⁵⁶ In the 2017 amendment, the terms intrinsic features holder and group holder are specified in a clearer way (art. 2). Presidential Decree n. 27992, 18 Apr. 2017.

The new act also indicates provisions for the formulation of master and action plans⁴⁵⁷ regarding the management of ICH by the Cultural Heritage Administration and mayor/do governor of provinces or cities.⁴⁵⁸ Master plans shall be submitted every five years and shall cover safeguarding and promoting actions in favour of ICH, such as:

- basic direction settings for safeguarding;
- security and distributing funds;
- fostering education and transmission;
- internationalisation of Korean ICH.

Holders and all other successors shall be interpellated when drafting the master plan, in accordance with article 7.2 and following the UNESCO ICHC (2003) suggestions on community involvement.⁴⁵⁹ Action plans shall be presented every year based on the master plan suggestions (art. 8) and receive necessary funds to implement it. Besides the Cultural Heritage Administration and mayor/do governor, an intangible cultural heritage committee with subcommittees should also be established, which deliberate matters concerning the “safeguarding and promotion of intangible cultural heritage,”⁴⁶⁰ namely: master plans, designation, and revocation of ICH; items in need of urgent safeguarding recognition and revocation of successors; and selection of ICH for UNESCO nomination (art. 10). In the last amendment (Presidential Decree n. 27992) several articles have been added, which deliberates on matters concerning committee meetings (art. 7), subcommittee (art. 8), technical experts selected (art. 9), members’ exclusion or dismissal (art. 5-6), allowances for members (art. 11), detailed rules for operations (art. 12-13) and establishment of an administrative secretary (art. 10). Members of the committee have different professional backgrounds,⁴⁶¹ thus, guaranteeing different perspectives and points of view to be respected when deciding the most important matters.

The act also introduces another significant provision, that is the selection and protection of ICH in need of urgent safeguarding, which was not covered by the CPPL, and it clearly represents an addition based on international instrument models, as well as a reflection of the concerns regarding the rapid transformation of Korean society. The law enacted in 2015 lacks in detail when describing what kind of intangible

⁴⁵⁷ These new provisions can be compared to the CPPL simple management system, which consisted of drafting the basic plans by the Cultural Heritage Administration. Presidential Decree n. 16413, 30 June 1999.

⁴⁵⁸ The mayor/do governor are indicated in the text as: special metropolitan city mayor, metropolitan city mayors, metropolitan autonomous city mayor, do governors, and special self-governing provinces. Act on the Safeguarding and Promotion of Intangible Cultural Heritage, Act. n. 13248, 2015, art. 7.

⁴⁵⁹ UNESCO, Intangible Cultural Heritage Convention, 2003, art. 15 states: “Within the framework of its safeguarding activities of the intangible cultural heritage, each State Party shall endeavour to ensure the widest possible participation of communities, groups and, where appropriate, individuals that create, maintain and transmit such heritage, and to involve them actively in its management.”

⁴⁶⁰ Act on the Safeguarding and Promotion of Intangible Cultural Heritage, Act. n. 13248, 2015, art. 10.

⁴⁶¹ The committee shall be composed of 30 members selected among: professors of courses related to ICH, people working in the promotion and safeguarding of ICH, experts in the field of folklore, anthropology business, law, administration, traditional performing arts, and craftsmanship (art 9.3).

heritage shall be considered endangered, however it outlines four important points to be followed by the administration to support the selected items (art. 13). These four provisions indirectly refer to chapter 3 of the ICHC, which is about safeguarding ICH at the national level. Fostering research in the artistic, technical, and scientific fields (art. 13.1 of the act), and encouraging training and transmission activities (art. 13.3) are suggestions already outlined in the ICHC article 14.⁴⁶² However, the “discovery of successors”⁴⁶³ could be regarded as following the suggestions made by UNESCO for the participation of communities, groups, and individuals.⁴⁶⁴ In addition, the documentation of important intangible heritage (art. 13.4) recalls article 12 (ICHC) about “inventories.”⁴⁶⁵ In 2017, through presidential decree, the act was amended and important additions were made. The new decree describes the characteristics which ICH has to possess in order to be considered in urgent need of safeguarding, which can be summarized as: ICH threatened by external environmental changes (art. 16.1(1)), no eligible successors (art. 16.1(2)), and impossibility of transmission (art. 16.1(3)). The importance attached to the presence of transmitters and bearers should be noted in order to not consider the item in critical situation. Once again, the Korean legislation appears to be sensible in regard to the important role of transmission and human-centered nature of this kind of heritage. For instance, Chapter 4 is entirely dedicated to the recognition of successors and it was recently amended through presidential decree n. 27992 in 2017 with important additions concerning the recognition of holders (art. 16), honorary holders (art. 17), and assistant instructors (art. 18). Holders can be an individual person (poyuja 보유자) or a group of people (poyu danch'e 보유단체), which demonstrate relevant and outstanding technical skills that constitute the “archetype”⁴⁶⁶ of the ICH item (art. 16).⁴⁶⁷ Concerning honorary holders (myōnge poyuja 명예 보유자), the nomination should follow an investigation carried out by the committee or at least by three relevant experts in the field, as stated in the Act’s article 53. After the investigation is complete, the administration should consider three main points when judging the possible holder (Presidential Decree n. 27992, art. 17): transmission commitment, public presentations, his/her successors’ training outcomes, and sustainability of the following activities to be carried out by other holders or successors. All successors’, as defined by law in art. 2.7,⁴⁶⁸ recognition and revocation are described under chapter four (from art. 17 to 21), while Chapter 5 specifies rules for “successor training and public presentations.”⁴⁶⁹

⁴⁶² ICHC article 14 suggests member states to foster education, raise awareness, and build capacity for the items concerned.

⁴⁶³ Act on the Safeguarding and Promotion of Intangible Cultural Heritage, Act. n. 13248, 2015, art. 13.2.

⁴⁶⁴ UNESCO, Intangible Cultural Heritage Convention, art. 15.

⁴⁶⁵ UNESCO, Intangible Cultural Heritage Convention, 2003, art. 12.

⁴⁶⁶ In the meaning described by law, act n. 13248 on March 27, 2015, art.2.2: “The term ‘archetype’ means intrinsic features prescribed by Presidential Decree, which constitute the value of specific intangible cultural heritage.”

⁴⁶⁷ Presidential decree n. 27992, 18 Apr. 2017.

⁴⁶⁸ Act on the Safeguarding and Promotion of Intangible Cultural Heritage, Act. n. 13248, 2015, art. 2.7: “The term ‘successor’ means a person or group as defined in any of sub-paragraphs 3 through 6.”

⁴⁶⁹ Act on the Safeguarding and Promotion of Intangible Cultural Heritage, Act. n. 13248, 2015.

The connection of this legal instrument to the UNESCO one has been thoroughly stressed by the above-mentioned analysis. In addition, article 47 directly recalls Chapter 8 about the implementation of the international convention by establishing the UNESCO International Information and Networking Center for ICH under the Cultural Heritage Administration. Funds and operating expenses are provided by the national treasury. The center was established in 2011 as a UNESCO category two center⁴⁷⁰ for the Asia-Pacific region. Another significant stance is expressed in article 36 about the cooperation between the North and South Korea. Recognition of ICH set in North Korea's five regions should be implemented and this political ideology is also reflected in the chapter entitled, "A Peaceful and Prosperous Korean Peninsula," in Moon Jae-In's five-year plan. The globalization of the Cultural Heritage Administration and exchange with North Korea's cultural policy⁴⁷¹ make this provision concrete, and follow UNESCO's suggestions in the ICHC guidelines for a more peaceful and trustworthy future through enhancement of intangible cultural heritage and respect of cultural diversity.⁴⁷²

Section 3: Administration and Management of ICH

Korean national administration is specially structured and divided into 22 ministries. In 2008, the Ministry of Culture Sport and Tourism⁴⁷³ was established, substituting the previously named Ministry of Culture and Sport. Under the Ministry of Culture, the agency for cultural properties was settled and then renamed the Cultural Heritage Administration.⁴⁷⁴

The Korean ICH administration and management system is divided into two levels: the national and local ones. The latter is distributed throughout the territory between provinces, and special metropolitan and autonomous cities, for a total of seventeen local administrations and five North Korean provinces with a specific governor.⁴⁷⁵ The Minister of Culture, Sport, and Tourism is at the head of the charter under which the Cultural Heritage Administration was established. This governmental agency takes responsibility for the administration and management of ICH and living national treasures. Moreover, it is in charge of all Korean cultural heritage, divided into five operational divisions: general affairs, director general for

⁴⁷⁰ More information is provided on the ICHCAP website: "Overview and history," ICHCAP, accessed June 19, 2018, <http://www2.ichcap.org/about-us/overview-and-history/>.

⁴⁷¹ For the vision and mission of South Korea's Cultural Heritage Administration, visit the following link: "Vision and Mission," Cultural Heritage Administration, accessed June 19, 2018, http://english.cha.go.kr/html/HtmlPage.do?pg=/aboutCha/vision_mission.jsp&mn=EN_04_02.

⁴⁷² UNESCO, *Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage* (Paris: UNESCO, 2016).

⁴⁷³ In Korean: Munhwa Cheyuk Gwangwang-Bu, 문화체육관광부 (文化體育觀光部). A noteworthy addition is "tourism" under the ministry, which deals with culture. The relations between traditional culture and tourism in Korea have been analysed by Jong-Sung Yang, *Cultural Protection Policy in Korea*, 94-95.

⁴⁷⁴ In Korean: Munhwa Chaech'ong, 문화재청 (文化財廳).

⁴⁷⁵ The Korean law usually refers to mayors and province/region governors as: mayor/do governor.

planning and coordination, heritage policy bureau, heritage conservation bureau, and heritage promotion bureau. The Education Center for Traditional Culture is set apart, composed of the Korea National University of Cultural Heritage, National Research Institute of Cultural Heritage, and twelve other detached management offices concerned with the organisation of cultural heritage representative places⁴⁷⁶. In addition, a national intangible cultural heritage center was founded in the city of Cheongju on October 1, 2013,⁴⁷⁷ with the main goals of enhancing the intergenerational transmission system and becoming an anchor institution in the safeguarding of ICH.⁴⁷⁸ Besides the Cheongju center, 132 other inheritance centers have been opened and distributed throughout the territory.⁴⁷⁹

The last report in 2018 regarding the actual designations of the intangible heritage includes 128 items inscribed on the national list and 556 for the regional ones.⁴⁸⁰

Both at the local and national levels, an intangible cultural heritage committee is established, which deliberates on matters regarding ICH recognition, cancellation, administration, and management. State and local governments' obligations are stressed in article 4 of the Act on the Safeguarding of Intangible Cultural Heritage.⁴⁸¹

This section aims at analysing the South Korean administration and management of ICH and particularly LHT at both the local and national levels. The text always tries to compare the previous CPPL regulations and criticism with the actual legislation, and its further amendments. The first part takes into consideration the recognition and revocation of the nomination of successors and ICH items, and plunges into more details for what concerns the holders and other ICH bearers' duties.

Transmission and education are at the heart of the second subsection, which outlines formal and non-formal, and official and unofficial education activities at the national and regional levels. Various forms of government subsidies try to foster transmission and preservation, beside the in-school classes. Some Asian

⁴⁷⁶ The organisational chart of the Cultural Heritage Administration agency can be consulted at the following link: "Organizational chart," Cultural Heritage Administration, accessed June 19, 2018, http://english.cha.go.kr/html/HtmlPage.do?pg=/aboutCha/Oraganizational_Chart.jsp&mn=EN_04_05.

⁴⁷⁷ The timeline with relevant dates regarding the National Intangible Cultural Heritage Center can be found at the following link: "History and Role," National Intangible Heritage Centre, accessed June 19, 2018, http://www.nihc.go.kr/nihc/home/html/HtmlPage.do?pg=/KO/nith/sub_06_03.jsp&mn=KO_06_03.

⁴⁷⁸ The mission and vision of the National Intangible Cultural Heritage Center can be found at the following link: "Mission and Vision," National Intangible Heritage Centre, accessed June 19, 2018, http://www.nihc.go.kr/nihc/home/html/HtmlPage.do?pg=/KO/nith/sub_06_02.jsp&mn=KO_06_02.

⁴⁷⁹ More information on heritage and transmission centers can be found on the National Intangible Heritage Center website: "Inheritance Centre," National Intangible Heritage Centre, accessed June 19, 2018, http://www.nihc.go.kr/english/html/content.html?menu=03_01.html.

⁴⁸⁰ The report can be found on the Ministry of Culture, Sport, and Tourism website at the following link: "Gukkamuhyōngmunhwajae T'ongkye 국가무형문화재 통계," National Intangible Heritage Centre, accessed June 19, 2018, http://www.nihc.go.kr/nihc/home/cop/bbs/selectBoardList.do?bbsId=BBSMSTR_000000000106&mn=KO_02_04.

⁴⁸¹ The article states as follows: "(1) The state shall formulate and implement a comprehensive policy to safeguard and promote intangible cultural heritage. (2) Each local government shall formulate and implement a policy to safeguard and promote intangible cultural heritage, giving due consideration to regional characteristics (...)."

systems, like the Korean one, has since developed a comprehensive subsidy support for living human treasures, which the third part introduces.

3.3.1. Intangible Cultural Heritage and Living Human Treasures Recognition and Control

Designation and management of ICH and holders, as well as other successors, are organized at the national and local levels. A national list of ICH as well as a regional list are established, nevertheless, the mayor/do governor may decide to include local heritage on the national list.⁴⁸²

State-Designated ICH:

The designation of intangible cultural heritage with national importance is carried out by the ICH committee and the cultural heritage administration.

The Act on the Safeguarding and Promotion of Intangible Cultural Heritage imposes within article 9 the establishment of the Intangible Cultural Heritage Committee. This committee composed of 30 members is in charge of the deliberation regarding various activities, all listed in article 10, respectively:

- master plans compiled by the Cultural Heritage Administration;
- designation or revocation of national ICH;
- recognition of holders or other cultural bearers;
- designation of national ICH in need of urgent safeguarding;
- selection of items to be proposed for nomination by UNESCO;
- other matters decided by the cultural heritage administrator.

As declared by law, the Cultural Heritage Administration administrator is responsible for the recognition and cancellation of any intangible cultural property, holder, or other people who bear national relevant knowledge.

For the designation process of national intangible cultural heritage, living human treasures and ICH in need of urgent safeguarding, the administration asks the committee to conduct an investigation and after having reported it (art. 53 of the Act), the administration can give public notice in the official gazette.⁴⁸³ The nomination has to be determined within six months of public notice, otherwise, the provision falls and the procedure should start again.

Concerning ICH in urgent need of safeguarding, it should be selected among already designated national intangible cultural heritage (art. 15). However, the simultaneous nomination of both ICH and ICH

⁴⁸² As described in the Act, art. 31.3, after receiving the consensus by the local ICH committee.

⁴⁸³ Presidential Decree n. 27992, 18 April 2017, art. 14.2.

in danger may occur in order to prevent disappearance of traditional culture.⁴⁸⁴ This latter provision was added after the CPPL demonstrated some limitations because of the rigid system, which did not comprise endangered ICH, and the slow nomination process, which allowed for disappearance to continue undisturbed.⁴⁸⁵ For this reason, the latter legislation has also considered simultaneous designation as a possible option.

For the revocation of the designation of an item inscribed on the national list, the administration is responsible for the decision and shall operate in accordance with the committee. Cancellation may occur for different reasons: the item has lost its value; transmission has been interrupted or deemed impossible; or, concerning ICH in urgent need of safeguarding, danger is ceased, and safeguarding measures are no longer needed.⁴⁸⁶ In addition, cancellation may also occur when the designation was made by fraud or other illegal means.⁴⁸⁷

Local-Designated ICH:

The procedure for the inscription and revocation of ICH and LHT on the lists of local governments is practically identical to the one described above. Governors shall prescribe items, which fall under their jurisdiction and do not overlap with territorial boundaries. A local committee is established in order to deliberate on local matters concerning intangible heritage safeguarding and promotion. All the decisions taken by the territorial governor shall have prior consent from the committee, which reports to the National Cultural Heritage Administration. Moreover, the mayor/do governor⁴⁸⁸ has to communicate any changes in the deliberation, designation, and administrative orders to the main administration within 15 days of the date of occurrence (art. 33).

In order to not have any overlap between the national and local systems, the act states that any ICH, successors, or ICH in need of urgent safeguarding already registered on the national list cannot be nominated at the local level (art. 32). This may represent a disadvantage for items with many variations at the national level because de-contextualization, by inscription on the national list, usually causes loss of diversity and homogenization.⁴⁸⁹

Holders, Honorary Holders and Other Successors' Recognition and Rules:

⁴⁸⁴ Presidential Decree n. 27992, 18 April 2017, art. 15.3.

⁴⁸⁵ Seong-Yong Park, *On Intangible Heritage Safeguarding Governance* (Newcastle Upon Tyne: Cambridge Scholars Publishing, 2013), 101-102.

⁴⁸⁶ Act n. 13248, 27 March 2015, art. 16.

⁴⁸⁷ Act n. 13248, 27 March 2015, art. 15.

⁴⁸⁸ See footnote 458.

⁴⁸⁹ Seong-Yong Park, *On Intangible Heritage Safeguarding Governance* (Newcastle Upon Tyne: Cambridge Scholars, 2013), 103.

The designation process for holders and other successors of intangible cultural items is similar to the one applied to ICH properties. However, further regulations were added, which aim to improve clarity in the discipline. Moreover, the addition of holder groups and the possibility to nominate ICH without any holder necessitated the formulation of a more comprehensive discipline.

Chapter 4 of the act establishes the recognition of holders (art. 17), honorary holders (art. 18), assistant instructors for successor training (art. 19), notification of recognition (art. 20), revocation (art. 21), rules for regular inspections to be carried out by the Cultural Heritage Administration (art. 22), successors' duties on reporting to the main administration (art. 23), and other measures of administrative order (art. 24). The partial amendment of the act, approved on April 18, 2017,⁴⁹⁰ sets more rules and procedures to be followed during the recognition of holders (art. 16), honorary holders (art. 17), and assistant instructors for successor training (art. 18).

The new legislation follows the previous CPPL's provisions, however, cultural heritage administration or mayor/do governors are not obliged to nominate an official holder if the item does not require one (art. 17). This happened for Arirang⁴⁹¹ and other items inscribed on the national list; this represents a relevant change at the national level, which previously lacked this possibility and now comprises a wider range of scopes and more varied category differentiation.⁴⁹² In addition, holder groups are introduced, an extension which clearly draws on the International Convention for the Safeguarding of Intangible Cultural Heritage, where central importance is given to communities and groups.⁴⁹³ When a group of holders is inscribed, this "shall be a non-profit corporation"⁴⁹⁴ in order to remove any possibility of commercial speculation. An elucidation of the term "group holder" is provided in art. 16.2,⁴⁹⁵ which comprises the concept of community and group. The legislation interestingly associates the definitions of both cultural and local communities,⁴⁹⁶ also investigated during the ICHC drafting process. The article states that a group holder may be identified with: "where a number of residents practice technical skill,

⁴⁹⁰ Republic of Korea, Presidential Decree n. 27992.

⁴⁹¹ Arirang is a Korean lyrical folk song inscribed on the UNESCO representative list of ICH in 2012. "Arirang, lyrical folk song in the Republic of Korea," ICH UNESCO, accessed June 19, 2018, <https://ich.unesco.org/en/RL/arirang-lyrical-folk-song-in-the-republic-of-korea-00445>.

⁴⁹² Jung-Eun Park, "Diverse Values of Intangible Heritage - A Comparative Perspective on the 2003 Convention and the New Intangible Heritage Safeguarding Law of South Korea," *Korean Journal of Intangible Heritage* 3, (December, 2017), 237.

⁴⁹³ Many considerations could be made on the value given to the definitions of communities, groups and individuals both at the international and European levels. Here, I shall refer to the narrower meaning of these terms, thus considering the close up group of people involved in transmission and who have direct engagement with activities concerning ICH items. A useful reference to fully understand the different usage of these terms in international document, sometimes interchangeably, is provided by the text: Jane Blake, "UNESCO's 2003 Convention on Intangible Cultural Heritage - The Implications of Community Involvement in 'Safeguarding'," in Laurajne Smith and Natsuko Akagawa, *Intangible Heritage* (London, New York:Routledge, 2009), 53-55.

⁴⁹⁴ Act by Presidential Decree n. 13248, art. 17.

⁴⁹⁵ Presidential Decree n. 27992, 18 April 2017.

⁴⁹⁶ Here I refer to the definition of cultural community proposed by Peter Seitel, *Proposed Terminology for Intangible Cultural Heritage*, 8.

artistic skill, or knowledge of intangible cultural heritage, by forming a group or community where the relevant intangible heritage is transmitted.” The use of the word “residents” underlines the people’s sense of belonging, who are involved with transmission in a specific place, whereas the common practice of an intangible cultural item guarantees the transfer of heritage and its safeguarding. Other reasons, which can cease the qualification for national successor are: death, physical problems, imprisonment, impossibility of transmission, failure to provide training or assistance, emigration to another country, and impossibility of performance.

Qualities and characteristics that shall be held both by an individual and a group holder are the same, described in art. 16 of the last amendment.⁴⁹⁷ Important value is attached to the transmission and role of holders in this activity, which represent the major characteristic that designated successors shall foster, the same system of transmission is in fact regarded as part of the nomination.⁴⁹⁸ For this reason, Korean national legislation also regulates inspections on the activities carried out for the transmission of ICH by designated people and organizations (art. 22) every five years, in order to monitor the situation and plan future policies and actions. This is a crucial point for ICH management and transmission, which is put into effect through national policies, adjustments, and establishment of transmission centers as well as educational curricula in the field. This progressive control of the protection system and activities also tries to model the changing and transforming nature of cultural traditions, whose safeguarding has been prevented many times because of the difficulty of drafting an *ad hoc* legislation, which should have been as flexible as the heritage in question.⁴⁹⁹

3.3.2. Formal and Non-Formal Transmission and Education

The Act for the Safeguarding and Promotion of Intangible Cultural Heritage states the “transmission and development of traditional culture”⁵⁰⁰ as one its basic principles, which not only draws on the recognition of holders, but also calls into question education and transfer of knowledge to future generations. Formal and non-formal education are at the heart of the new legislation, which also stresses the duty of the state and local governments in supporting educational activities⁵⁰¹ and planification of the five-year master plans, drafted by the Cultural Heritage Administration, about “matters concerning

⁴⁹⁷ Presidential Decree n. 27992, 18 April 2017.

⁴⁹⁸ This procedure was inherited from the previous CPPL, which already took into consideration the generational transmission methods as fundamental parts of ICH protection and designation. The new act amendment, Presidential Decree n. 27992, 18 April 2017, art. 16.2, states, “ability and means” of transmitting represents one of the requirements for nomination eligibility.

⁴⁹⁹ Dawn-Hee Yim, “Achieving Institutionalization of Safeguarding ICH: Korean Experience,” in VV.AA., *Creative Values of ICH for Sustainable Development* (ICHCAP, 2012), 72-79.

⁵⁰⁰ Act n. 13248, 27 March 2015, art. 3.2.

⁵⁰¹ Act n. 13248, 27 March 2015, art. 38.

promoting the education and transmission of, and nurturing experts in, intangible cultural heritage.”⁵⁰² Both formal and non-formal education are fostered at the national and local levels.

Formal education can be divided into three clusters: primary, secondary, and tertiary. Article 37 of the Act imposes state and local governments to provide successors’ training with support for primary and secondary education activities. The national tertiary formal education is encouraged through official curricula at the Korea National University of Cultural Heritage, a state-funded institute⁵⁰³ which provides education in various fields from management to conservation of cultural heritage. Moreover, the university provides lifelong courses in its Lifelong Education Center with the aim of fostering closer relationships with local residents and promoting regional development.⁵⁰⁴ The Korean National University of Arts also offers curricula in Korean traditional arts, such as traditional music, dances and dramatic performances.⁵⁰⁵ The National Research Institute of Cultural Heritage, founded by Presidential Decree⁵⁰⁶ in 1975, was renamed in 2008 as the Folklore Research Division after Intangible Cultural Heritage Division,⁵⁰⁷ with the main goals of fostering knowledge about cultural heritage as well as enhancing value.⁵⁰⁸ The research institute has several regional branches throughout the peninsula, thus providing national as well as regional education centers.⁵⁰⁹ The Intangible Heritage Center also enhances transfer and promotion of cultural traditions, however, through means of a more informal, or better, non-formal system (mainly workshops). The education department is structured in two divisions, each addressed to different stakeholders, respectively: specialized education in intangible heritage and social education.⁵¹⁰ The first is concerned with the reinforcement of teaching competencies and management of intangible cultural heritage, while the latter focuses more on the spreading of values attached to transmission. Lessons and edu-performances also take place in the Transmission Center for Intangible Cultural Properties, as part of the Korea Cultural Heritage Foundation and founded by the Cultural Heritage Administration in 1997 in order to provide a public space for transmitters⁵¹¹ to perform and to pass down their knowledge to the general public.

⁵⁰² Act n. 13248, 27 March 2015, art. 7.3.

⁵⁰³ The university was founded by Presidential Decree n. 14982, in 1996.

⁵⁰⁴ Lifelong learning for the transmission of ICH was one of the key themes in the Chengdu meeting (June 11-13, 2017) discussed by the secretariat and experts of UNESCO. For more information, see: Marc Jacobs, “Climbing the Priority Ladder: Education and ICH,” ICHCourier 34, 2017, <http://ichcourier.ichcap.org/en/climbing-the-priority-ladder-education-and-ich/>.

⁵⁰⁵ “Korean National University of Arts, Korean Traditional arts curricula,” accessed June 19, 2018, <http://eng.karts.ac.kr:8090/?MID=curriculumKTA>.

⁵⁰⁶ Presidential Decree No. 7600 and renamed in 1995 by Presidential Decree No. 14809.

⁵⁰⁷ Ordinance of the National Research Institute of Cultural Heritage No. 7.

⁵⁰⁸ More information on the mission and goals of the institute can be found at the following link: <http://nrch.go.kr/english/page.do?menuIdx=101>.

⁵⁰⁹ The institute branches are located in: Gyeongju, Buyeo, Changwon, Naju, Chungju, and Ganghwa.

⁵¹⁰ On the center’s official website they are referred as: muhyoeng yusan joenmunkyoyuk 무형유산 전문교육 and muhyoeng yusan sahuekyoyuk 무형유산 사회교육. For reference, see: http://www.nihc.go.kr/nihc/home/html/HtmlPage.do?pg=KO/eventes/sub_01_03_01.jsp&mn=KO_01_03_01.

⁵¹¹ At that time, some performers or groups of performers could not afford a private studio to teach and train their students and so, for this reason, the South Korea government decided to provide them with a public space. The center became a home for different designated groups. Transmitters not only pass down their knowledge through class and courses, but they also

Besides official government-led institutions, many practitioners have founded their own safeguarding societies, where they provide education.⁵¹² In this way, Korean ICH transmission and education system keeps on fostering and spreading knowledge about ICH through a double-track structure: official and unofficial, which is now regarded as successful.⁵¹³ In addition, the South Korea government has established economic subsidies for recognised training schools⁵¹⁴ to cover: salaries and allowances; expenses for teaching materials; facilities and equipment;⁵¹⁵ and scholarships for students with excellent academic achievements.⁵¹⁶ The new legislation, under Chapter 5 for the “Promotion of Intangible Cultural Heritage,” considers education as a way of promoting ICH and its safeguarding and, for this reason, state and local governments are given the duty of improving in-school and out-of-school arts education (art. 38). In this way, South Korea places promotion of traditional culture and awareness raising through education side-by-side, by means of formal and non-formal activities, which is one of the main goals adopted by the last Jeju Island Committee.⁵¹⁷

After designation has occurred, living human treasures, as well as other successors, have to promote and transmit knowledge and know-hows linked to their intangible cultural item as required by law.⁵¹⁸ Revocation of recognition may apply if a successor is unable to transmit or teach (art. 21). This duty is a particular aspect of the Korean transmission system, which does not require any cost to be paid by students, in fact the holders are provided with a monthly allowance issued by the national or local government⁵¹⁹ in order to cover the costs for the training classes. Recognition, by means of national economic support, of the importance attached to the living character of a traditional expression and to the holder has improved the living conditions of both the bearer and heritage, by raising the people’s social status involved in the transmission and of the Korean traditional culture.⁵²⁰

The LHT transmission system consists of three different levels of education: initiates’ education, advanced trainees’ education, and assistant instructor of initiates. Each degree of expertise is recognised by a different title, respectively: “initiates, advanced students, assistant instructors, living human treasures,

perform for the public as means of promotion and preservation. For more details, visit the center’s website at the following link: <https://www.chf.or.kr/en/c3/sub3.jsp> and Jong-Sung Yang, *Cultural Protection Policy in Korea*, 48-49.

⁵¹² “Republic of Korea: Periodic Reporting on the Convention for the Safeguarding of Intangible Cultural Heritage,” accessed June 19, 2018, <https://ich.unesco.org/en/state/republic-of-korea-KR?info=periodic-reporting>.

⁵¹³ ITH/15/10.COM/6.a, ¶36.

⁵¹⁴ As defined by: Act n. 13248, 15 March 2015, art. 30.

⁵¹⁵ Republic of Korea, Presidential Decree n. 27992, art. 29.

⁵¹⁶ Act n. 13248, 27 March 2015, art. 30.

⁵¹⁷ ITH/17/12.COM/6.

⁵¹⁸ Act n. 13248, 27 March 2015, art. 25.

⁵¹⁹ Dawn-Hee Yim, “Achieving Institutionalization of Safeguarding ICH: Korean Experience,” in VV.AA., *Creative Values of ICH for Sustainable Development* (ICHCAP, 2012), 75.

⁵²⁰ Articles written by Ye Yong-Hae in 1960 depict the miserable conditions of the living human treasures before the CPPL entered into force and an interest in the recognition and safeguarding of holders grew nationwide. Ho-Jeong Soul, “The Hidden Friend of Living Human Treasures,” *Koreana* 26 n. 3, (Autumn, 2012).

emeritus living human treasures.”⁵²¹ As for holders and honorary holders, the provisions made by the new legislation have already been mentioned. Concerning assistant instructors, the act only requires the Cultural Heritage Administration to discuss it; the assistant instructors’ recognition section was amended in 2017 providing new rules and more details. For instance, the person appointed for the nomination shall have engaged in the transmission for at least 5 years (art. 18),⁵²² thus guaranteeing actual involvement of the people appointed. Skills and means are also judged as set by law (art. 18.1-2). In order to encourage the transmission, assistant instructors in the successor training receive a monthly allowance and other subsidies which should cover extra-expenses (art. 22).⁵²³ The instructors must provide a certificate of completion issued by the Cultural Heritage Administration, after having examined skills and knowledge (art. 26), and with the supervision of at least three experts in the field.⁵²⁴ Moreover, selected recipients can receive national economic help through established scholarships provided in certain ICH fields,⁵²⁵ in order to encourage the continuation of the transmission.⁵²⁶

3.3.3. Government’s Economic Support to ICH Successors

Korea has mainly sustained ICH practitioners with direct economic monthly allowances since the Nineties. This system has been of great help in order to help holders make a living from their traditional activities, which had lost in popularity, thus economically affecting most of them. However, some suggestions were expressed in order to foster the creation of a more self-supportive economic system for successor independence. For this reason, the new legislation tries to create a more comprehensive system for the promotion of ICH production and activities in order to establish a positive economic circle especially for practitioners’ products and transmission.

At both the national and regional levels, holders, holder groups, honorary holders, and assistants receive a monthly stipend from the government. This economic support has increased during the decades following Korean economic growth. In the Nineties⁵²⁷ an official holder received 400,000 Korean Wŏn⁵²⁸ every month, moreover, the economic aid also provided special grants and funeral or hospital expenses.

⁵²¹ Dawn-Hee Yim, “Achieving Institutionalization of Safeguarding ICH: Korean Experience,” in VV.AA., *Creative Values of ICH for Sustainable Development* (ICHCAP, 2012), 76.

⁵²² Republic of Korea, Presidential Decree n. 27992, 18 April 2017.

⁵²³ Republic of Korea, Presidential Decree n. 27992, 18 April 2017.

⁵²⁴ Presidential Decree n. 27992, 18 April 2017, art. 23.

⁵²⁵ Intangible cultural heritage fields, which may receive government scholarships are selected by the Cultural Heritage Administration as stated in Presidential Decree n. 27992, 18 April 2017, art. 24.

⁵²⁶ Presidential Decree n. 27992, 18 April 2017, art. 24.

⁵²⁷ The recognition of monetary aid to practitioners started to be supported at national level in 1990, close to the “Living Human Treasures System” proposal to UNESCO made by the Republic of Korea in 1993.

⁵²⁸ Approximately €340 today.

Today, nationally recognised holders receive 1,317,000 Wŏn/month,⁵²⁹ in addition the state supports material, facility, and equipment purchases for performances as well as educational activities.⁵³⁰ At the regional level, subsidies are lower⁵³¹ but still on a monthly basis. The sum is established by the local government and, for this reason, an eligible successor in Seoul could receive more money from one set on the Jeju island. Some other variations may exist from one local government to another, such as salaries for *poyuja* nominees⁵³² and special subsidies for events, performances, and special individual or group artistic attainments.

The new act also comprises some special economic measures to be implemented in order to enhance ICH practitioners' activities, such as business start-ups, traditional items manufacturing and distribution,⁵³³ or even tax benefits and reduction on fees for the use of public facilities.⁵³⁴ Another interesting addition made by law is the creation of a "bank for traditional craft products,"⁵³⁵ which has the duty to buy, lease, and exhibit traditional crafts in order to sell and publicize articles produced in a traditional way.

New politics along with the original subsidy system have been ameliorating the living conditions of living human treasures and other successors involved in the transmission of ICH. Public recognition and social esteem were fostered also thanks to these economic efforts and *ad hoc* traditional business project policies, by elevating the social status of practitioners and giving them "individual self-respect."⁵³⁶ In this way, through the coordination and implementation of both public support for education and successors' welfare, South Korea has guaranteed safeguarding of traditional expressions and their transfer to future generations. However, once again the issue of "marketing folk cultural properties,"⁵³⁷ especially in the last provisions adopted by the new safeguarding act, is even more relevant today. Through the promotion of traditional crafts during cultural national and international events, and the government encouragement to set-up business-led activities with substantial financial help, intangible cultural heritage may enter into national and international markets with the risk of getting affected by strong competition and getting off-track. This will be an issue that the South Korean government should carefully consider in order to maintain the original spirit and essence of national cultural expressions, even when we consider the last decade's development policy, which tries to attain sustainable development and create new jobs through the

⁵²⁹ Approximately €1,050 today.

⁵³⁰ Act n. 13248, 27 March 2015, art. 37.

⁵³¹ Except for the Seoul Special Metropolitan City, where holders receive the highest salary in all the South Korean Peninsula, around €1,055/month (1,320,000 wŏn/month).

⁵³² This title is recognised with economic aid only in the Daejŏn Metropolitan city (대전) and in the South Gyŏngsang province (경남).

⁵³³ Presidential Decree n. 27992, 18 April 2017, art. 29.

⁵³⁴ Act n. 13248, 27 March 2015, art. 50.

⁵³⁵ Act n. 13248, 27 March 2015, art. 43.

⁵³⁶ Dawn-Hee Yim, "Living Human Treasures and the Protection of Intangible Cultural Heritage: Experiences and Challenges," *ICOM News* n. 4, (2004): 11.

⁵³⁷ Noriko Aikawa-Faure, "Excellence and Authenticity," 46.

rediscovery and the re-use of traditional Korean culture. On the one hand, this enhancement at the national level may increase creativity and redistribution of income, however, from a more anthropological and cultural perspective, this could also threaten the values attached to each single ICH expression, by levelling out the functions connected to the item, community, and spirituality.⁵³⁸

Section 4: Recognised Organisations

NGOs represent important stakeholders in the application of the UNESCO ICHC. Articles 9 and 11 of the 2003 Convention, introduce organisations inside the text, however, without referring to their roles and activities to be carried out, in order to enhance the safeguarding of ICH. The text only sets a general framework, by establishing the possibility of accreditation and stressing their fundamental role in the starting procedure for the identification of cultural expressions, namely, collecting documentation. Also, UNESCO 2016 Guidelines for the 2003 Convention provide some information, with regards to the accreditation method and NGOs general duties. As it concerns the current legislation in South Korea, only one reference has been done in the 2015 Act, where in art. 7 the text refers to “relevant organisations,” which should be consulted by the cultural heritage administration when formulating master plans. This loophole, at the national level, has been masterfully filled with the foundation of government supported organisations by communities, experts, and practitioners. A particular effort has been made by local governments, which have raised national and international awareness through festivals about the need to establish an association to promote ICH, creating a network.

The Republic of South Korea has developed a close network of NGOs and national organisations, which collaborate and contribute to the safeguarding of ICH and LHT, along with the consent of the central government, local administrations, and communities. Many of them are recognised by UNESCO as accredited organisations; however, some are only active on the peninsula, even though several projects are carried out in cooperation with other countries. Here are listed some of the major actors active in the safeguarding, promotion, and dissemination of ICH, also through the engagement with holders and holding groups. Moreover, in this age of modernization and loss of cultural roots, these organisations provide a mean to approach, in an easier way, cultural expressions which shall be rediscovered by the new generations, sometimes de-contextualized from their original frame, but even more actualized, as they address a public who has suffered from an internal migration, from the countryside to the urban areas. They represent the medium between the state and the cultural heritage, on one side, and the public, on the other, thus, having

⁵³⁸ Jong-Sung Yang, “Korean Cultural Property Protection Law,” 180-188.

the difficult task to generate cultural and social values through planned events, performances, and workshops by, at the same time, supporting and spreading traditional cultural values and cultural identity.

3.4.1 Korean Organisations Active at the National Level

International Mask Arts and Culture Organisation - IMACO, 세계탈문화예술연맹

The International Mask Arts and Culture Organisation has its headquarter in Andong, South Korea, since its establishment in 2006. It was accepted as an accredited NGO by the UNESCO Committee for ICH in 2013.⁵³⁹ However, its activity in the revitalization of mask culture goes back to 1997, when the Andong Mask Dance Festival took place for the first time. Today 128 organizations coming from 68 different countries are part of the organisation network, which has become one of the leading institutions for documentation, preservation, and promotion of mask arts around the globe.

Through the universal language of mask making and performances, the organisation has been fostering cultural revitalization and transmission of this artistic expression through various exhibitions⁵⁴⁰ and events around the world. Moreover, one of the association's most prominent activities has been and still is the documentation and collection of mask traditions and information from Korea and other countries. The organisation has created a website which collects useful data and documents in an open-source digital archive.⁵⁴¹ Other important activities are carried out, for instance, the organisation of "mask related creative activities,"⁵⁴² publishing of magazines, and elaboration of data using IT skills. The organisation's future goals are: implementation of the cooperation and joint projects with other cities, preparation for the nomination of Korean mask culture in the UNESCO representative list, enhancement of its relations with other UNESCO accredited NGOs, and enlargement of its network by appointing international directors.

The Center for Intangible Cultural Heritage Studies - CICS, ICHpedia, 무형유산지식백과

Throughout the years, this ICH cultural center has become an online project for the collection of ICH items and cultural expressions of the Republic of Korea. On the website's digital archive, netizens can contribute to the enrichment of this open-source media-center, which provides useful information regarding intangible cultural heritage and folklore expressions. It was accredited by UNESCO in 2016, as an advisory body to the committee and now it carries out various activities, including the most important one for the

⁵³⁹ "Accredited NGOs located in the Republic of Korea," ICH UNESCO, accessed June 19, 2018, <https://ich.unesco.org/doc/src/NGO-90295-8.COM-ICH-09.pdf>.

⁵⁴⁰ Until now, 30 exhibitions have been held in Korea and 15 overseas.

⁵⁴¹ "IMACO World Mask Archive," IMACO, accessed June 19, 2018, <http://www.srook.net/IMACO/636603565959542749>.

⁵⁴² "UNESCO, South Korea Accredited NGOs," ICH UNESCO, accessed June 19, 2018, <https://ich.unesco.org/en-state/republic-of-korea-KR?info=accredited-ngos>.

center: identification and documentation. ICH is identified, preserved, transmitted, and exhibited through the measures enacted by the NGO. Jeounbuk is one of the main regions where it carries out its activities and cooperates with the community in order to foster revitalization of traditional expressions through local festivals set in its headquarters. Both formal and non-formal classes are organized during the year, and a specific graduate program for ICH management and policy making was opened.

Concerning Master of Arts and practitioners, the ICHpedia⁵⁴³ collects precious information on people who were or still are representatives of Korean culture and ICH transmission. The main difference between this project compared to other archives is that it is structured in order to provide a bottom-up participation in the collection of materials and data, in compliance with the Korean latest established governmental goals.⁵⁴⁴ Communities of practitioners, NGO representatives, anthropologists, and other people can all contribute to the archive. It allows users to freely access any information and also share opinions, suggestions, and experiences with other users, thus creating a network between different stakeholders. The system is also easy to implement, thanks to the user-friendly interface and the relatively easy, efficient, and economic digital platform. In conclusion, ICHpedia tries to fill the gap between old, traditional cultures, and the more modern, technological world. It has connected different people with different abilities and professional skills, such as folklorists, policy makers, practitioners, and IT developers in order to create a useful tool for transmission and preservation of Korean cultural expressions by directly involving communities and individual bearers to participate in the project.⁵⁴⁵

World Martial Arts Union - WOMAU, 세계 무술연맹

In 1988, during the Seoul Summer Olympic Games, Taekwondo was inserted as an Olympic sport for the first time in the history of this international event. That same year in Chungju, the World Martial Arts Festival took place, which then became an annually recurring event. It was from those initiatives that the World Martial Arts Union was set up, through South Korea's wish and the agreement with other 28 international martial arts organisations all around the world. In 2002, WOMAU was established as a non-profit organisation based in Chungju (ROK) and in 2010 it was accredited as an advisory NGO by UNESCO. Today, 42 countries are active members of this union, and cooperate at the international level for spreading, promoting, and transmitting martial arts around the world. The main purpose and activities of the organisation not only comprise the transmission of skills related to martial arts, but also state the willingness

⁵⁴³ "ICHpedia Homepage," ICHpedia, accessed June 19, 2018, <http://www.ichpedia.org/>.

⁵⁴⁴ Tuul Machlay, *Comparative Study of Mongolia & Republic of Korea ICH Inventory System and the Process of the ICH Community Involvement* (Mongolian National Commission for UNESCO, 2016), <http://ichcap.org/eng/ek/sub9/sub3.php>.

⁵⁴⁵ "Encouraging ICH Safeguarding Through Online System: ICHpedia Project," ICH Courier Online, accessed June 19, 2018, <http://ichcourier.ichcap.org/en/encouraging-ich-safeguarding-through-an-online-system-ichpedia-project/>.

to contribute to the world peace in a positive way.⁵⁴⁶ This foreshadows the addition of the operational directives regarding “Intangible Cultural Heritage and Peace” in the final version of the 2003 ICHC guidelines (2016). Besides the collection of materials and documents, the organisation also fosters the transmission of skills and knowledge through educational activities, and encourages the promotion by organising exhibitions, conferences, and research in the field. The organisation chart is formed by the General Assembly, which meets every year in Chungju, and its Secretariat. Seminars, bilateral exchanges, and field surveys are also conducted, in order to network with other international members and report on the state of martial arts.

3.4.2. Korean Organisations Active at the International Level

Korean Cultural Heritage Foundation – CHF, 한국문화재단

The Association for the Preservation of Korea Cultural Properties was founded in 1980 and then renamed Korean Cultural Heritage Foundation in 1992, followed by the UNESCO accreditation in 2010. In article 3 of the foundation document, it clearly states the purposes of its establishment, which are the preservation and transmission of Korea traditional cultural expressions. However, even if its main scope is focused on the national ICH items, the organization has started activities in other neighbouring countries, such as Mongolia, Vietnam, and India. The centre is composed of the Korean Culture House with a folklore theater, the Korean House with an auditorium, and the Traditional Culture Education Centre with a traditional paper craft museum and a folklore arts theatre. Moreover, an exhibition gallery and library are open to the public. Listed holders and group holders can use the theatre and spaces for classes and performances. For this reason, the Seoul centre has become a cultural hub for practitioners and people interested in discovering traditional Korean culture. The foundation has been developing a more complex and comprehensive business since the opening of shops and a café, where people, mostly tourists, can find Korean products made using traditional methods.

Activities organized by the centre are various: from performances, exhibitions, classes, historical re-enactments of traditional ceremonies, and sale of traditional objects and foods. It also conducts surveys and research regarding ICH, and edits publications. This cultural organization has been able to adapt to more contemporary market requests by differentiating its functions and engaging in business-led activities without losing its main objectives. During the years, one of the most interesting events organized by the

⁵⁴⁶ “WOMAU, Agreement,” WOMAU, accessed June 19, 2018, http://womau.org/bbs/board.php?bo_table=e1x2&pageNum=1&subNum=2.

centre was the “moonlight walk.” This tour of the Changdeokgung Palace⁵⁴⁷ combines tangible and intangible Korean heritages with a traditional art performance at the end of the guided tour.⁵⁴⁸

The foundation sustains living human treasures by guaranteeing spaces to perform and have classes, and by covering the expenses for national and international performances and exhibitions. It also supports regional events on the peninsula in order to foster transmission all over the country, thus, contributing to the safeguarding and promotion of ICH nationwide.

Inter-City Intangible Cultural Heritage Network (ICCN)

Founded in 2008, this organization connects various cities in the world with the common aim of providing the best practices and an international network for ICH safeguarding. At the moment, 29 cities located in 31 different countries are part of the network as full members, 26 organizations are registered as associate members. The main office is in Gangeung City, South Korea, where the idea of an inter-city organization first sprang in 2004 during the International Round Table of Mayors on the Intangible Cultural Heritage about “Communion with Man and Myth.”

This network is based on the assumptions expressed in the 1998 Intergovernmental Conference on Cultural Policies for Development (UNESCO), the 2001 UNESCO Declaration on Cultural Diversity, and the 2003 Convention on the Safeguarding of Cultural Heritage.⁵⁴⁹ Its main goals are: foster sustainable local development, cooperate with local governments, and act for the benefits of the community and its well-being.⁵⁵⁰ Local communities are put at the centre of its thematic workshops organized every two years, and always discussing topics related to ICH and sustainable development at the local level. Since 2010, International Youth Forums and Women’s Forum have been organized with the same values and scopes as in the 2006 Recommendation document for the participants of the 2006 International Workshop of Local Government Administrators, and the General Assembly’s documents for the engagement of young people in the safeguarding and transmitting ICH and for women’s involvement in all aspects concerned with ICH, a theme often discussed by the ICCN since 2008.⁵⁵¹

The organization chart includes: a general assembly, which meets every two years and is formed by all the mayors from the member cities who are responsible for the main decisions carried out by the

⁵⁴⁷ In Korean: 창덕궁, which literally means “Prospering Virtue Palace.” Since 1997 UNESCO World Heritage site, the palace is set in Seoul in Jongno-gu Park. It was built in the early 15th century, during the Chōson dynasty by King T’aejong (1400-1418).

⁵⁴⁸ Updates on the event can be found on the foundation’s website: “Events,” CHF, accessed June 19, 2018, <http://www.chf.or.kr/nima/main.jsp>.

⁵⁴⁹ Gangeung Declaration, International Roundtable of Mayors on the Safeguarding of the Intangible Cultural Heritage (Gangeung City, Republic of Korea, 15-17 June 2004).

⁵⁵⁰ “ICCN About Us,” ICCN, accessed June 19, 2018, <http://www.iccn.or.kr/page/aboutus.php>.

⁵⁵¹ Egypt Declaration, 2008 International Roundtable of the ICCN (Qalyubiya, Egypt, 14 October 2008).

network; an executive board, whose nine members are assigned based on a fair rotation system between associate cities' representatives who plan the administration and strategy agenda; lastly, a secretariat based in Gangeung who, with the necessary funds provided by the South Korean city government, which coordinates all the decisions taken by the general assembly and the executive board.⁵⁵²

The ICCN represents the only existing international organization which fosters cooperation at the local level and following the principles established by the UNESCO 2003 Convention in the field of ICH. Its main activities encourage safeguarding, transmission, local community involvement, ICH documentation, cultural expression revitalization, adoption of specific policies at the local level for the promotion of intangible living traditional cultures, fostering education activities to transfer ICH connected skills and knowledge, sustainable development through tourism-led projects which hold relevant social impact, and the use of digital instruments as important tools for the protection and spreading of ICH. It was accredited as a worldwide organization to provide advising service to the ICH committee at UNESCO in 2010.⁵⁵³ The efforts put in the establishment of a collaborative network of cities have led to several positive results, such as the nomination of the “Ride of the Kings” in the Czech Republic inscribed in the representative list of UNESCO ICH⁵⁵⁴ and the Spanish “Centre for the Traditional Culture-School Museum of Pusol Pedagogic Project,” inserted as best safeguarding practice.⁵⁵⁵ Moreover, festivals such as the one held in Gangeung in 2012 or the one in Iran in 2014 have contributed to local community revitalization, especially in Esfahan, Iran, where for many years they did not have the opportunity to share cultural expressions, experiences, and problems along with other actors.⁵⁵⁶

Intangible Cultural Heritage Center in the Asia-Pacific Region - ICHCAP

Founded in Jönju, South Korea⁵⁵⁷ in 2011, the center is established as a category two center for the Safeguarding of ICH by UNESCO,⁵⁵⁸ following the proposal made by the Republic of Korea in 2005⁵⁵⁹

⁵⁵² “ICCN, Organization Chart,” ICCN, accessed June 19, 2018, <http://www.iccn.or.kr/page/organization.php>.

⁵⁵³ “ICCN accreditation,” UNESCO, accessed June 19, 2018, <https://ich.unesco.org/doc/src/NGO-90228-ICH-09.pdf>.

⁵⁵⁴ “UNESCO, Ride of the Kings in the South-East of the Czech Republic,” ICH UNESCO, accessed June 19, 2018, <https://ich.unesco.org/en/RL/ride-of-the-kings-in-the-south-east-of-the-czech-republic-00564>.

⁵⁵⁵ “UNESCO, Centre for Traditional Culture – School Museum of Pusol Pedagogic Project, Best Safeguarding Practice 2009,” ICH UNESCO, accessed June 19, 2018, <https://ich.unesco.org/en/BSP/centre-for-traditional-culture-school-museum-of-pusol-pedagogic-project-00306>.

⁵⁵⁶ Hee-Kyung Choi and Sumi Nam, “Why Local Governments Matter in Implementing the UNESCO 2003 Convention: The Case for ICCN,” *International Journal of Intangible Heritage* 10, (2015): 145-156.

⁵⁵⁷ Jönju city (in Korean: 진주) is located in the south-western part of the country, in North Jölla province.

⁵⁵⁸ “UNESCO, Category 2 Centres Under the Auspices of UNESCO,” ICH UNESCO, accessed June 19, 2018, <https://ich.unesco.org/en/category2#republic-of-korea-international-information-and-networking-centre-for-intangible-cultural-heritage-in-the-asia-pacific-region-ichcap>.

⁵⁵⁹ The Republic of Korea at the 33rd UNESCO General Conference in October 2005 made the official announcement for the establishment of ICHCAP.

and the active support of the Korean Cultural Heritage Administration, which set up the centre in 2006.⁵⁶⁰ It takes into account the 2003 Convention framework and promotes ICH in 48 Asian countries,⁵⁶¹ and it also advocates for the UN 2030 Sustainable Development Goals by means of fostering cultural diversity and protecting different cultural expressions. One of the main activities of the center is to enhance cooperation and sharing information between Asian countries. In order to accomplish these tasks, it organizes conferences, public events, and meetings, and gathers related materials on and off-line. For instance, on the centre's website there is a section where users can find several publications and a hyperlink to the e-Knowledge Center.⁵⁶² The center has been collecting books, reports, multimedia materials, and pictures related to the cultural traditions of member countries,⁵⁶³ and updating useful information for safeguarding practices and cultural partnerships initiatives.

The networking centre is a structured hierarchical organisation, which is formed by the governing board at the top, the executive committee and audit below it, and lastly the secretariat composed of two working divisions: The Bureau of Strategic Programmes, and Planning and Management. The governing board should approve programs, work-plans, and budgets; control reports; and establish rules, regulations, and internal procedures. It consists of fourteen people, who also outline the general guidelines for international and regional organisations' participation in the centre's activities. Concerning the committee, six people participate and the secretariat together with its subdivisions (strategic programs, information and research, cooperation and networking, knowledge and publication, IT management, and planning and management) include a total of 23 employees.

The main functions of the centre can be summarized as follows: collect the status of ICH safeguarding systems and policies from the state members, and the activities carried out by holders or relevant organisations; create cooperative networks through all the Asia-Pacific region; enhance intercultural dialogue, peace, and sustainable development through the ICH; support the nominations of members' items for UNESCO; and provide assistance for field surveys. Transmission is enacted through events and dissemination of information on the online platform.

World Traditional Archery Organisation (WTAO)

⁵⁶⁰ Seong-Yong Park, "Tasks for Safeguarding Intangible Cultural Heritage in the Asia-Pacific Region and the Vision of Activities of the UNESCO Category 2 Centre," in VV.AA., *Discourses on ICH Safeguarding Issues* (South Korea: ICHCAP, 2009), 26.

⁵⁶¹ Some of the countries taking part in the ICHCAP activities: Brunei Darussalam, China, Fiji, Indonesia, Japan, Kazakhstan, Malaysia, Maldives, Micronesia, Nepal, Palau, Papua New Guinea, Philippines, Republic of Korea, Singapore, Sri Lanka, Tajikistan, Tonga, Uzbekistan, and Vietnam.

⁵⁶² "ICHCAP e-Knowledge Center," ICHCAP, accessed June 19, 2018, <http://ichcap.org/eng/ek/index.php>.

⁵⁶³ Member States part of the ICHCAP project are: Republic of Korea, Japan, Mongolia, China, Indonesia, India, Cambodia, Malaysia, Bhutan, Tajikistan, Thailand, New Zealand.

The World Archery festival held in Yechŏn,⁵⁶⁴ in 2014 raised the discussion about the foundation of an archery organisation, which should promote the transmission of world archery traditions. Finally, in April 2016 the self-governing organisation was founded in the Republic of Korea and was officially launched in 2017. As of now, only four countries are part of the official members: Bhutan, Indonesia, Mongolia, Turkey, and South Korea. However, the NGO has also started mutual exchange projects with other countries, such as France. Moreover, membership is opened to people, firms, companies, museums, and holders who are in some way connected to archery know-hows and knowledge.

The organisation chart is similar to other Korean founded NGOs, with the general assembly at the top, a chairman, a board of directors, and secretary general split up into three divisions: archive, cultural projects, and exchange cooperation. These three offices also represent the three main activities of the organisation, which are: documentation and collection of materials related to archery, also including myths and folk stories; fostering and dissemination of archery knowledge in the world applied to real life, also thanks to new technologies which can fill the generational gap; and intercultural exchange and the valorisation of cultural diversity.

For the moment, there are three events in cooperation with other countries, which it organises every year: one in China called the Qinghai Archery Competition, held in August; the second in Turkey, hosted every year in the city of Beyoglu in July for three days, and third one in Yechŏn, in October.⁵⁶⁵

Section 5: Comparisons with other UNESCO 2003 ICHC Member States' Systems

The main aim of this section is to provide useful comparisons with the South Korean system of living human treasures. The Japanese and French systems represent two of the most virtuous examples in safeguarding and promoting practitioners' traditional activities. The choice was made in order to satisfy three main criteria: the geographical distribution, one in Asia and the other in Europe; then, the mix of two very different cultural approaches, the Eastern one (of South Korea and Japan) and the Western perspective on intangible cultural heritage. Lastly, the historical distribution in the enactment of *ad hoc* laws or other national instruments in order to sustain LHT. This varies from the Japanese one, enacted ahead of time in the Fifties when Europe or better UNESCO States Parties had just drafted the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. As for France, the International Convention on the Safeguarding of ICH and the FARO Convention in 2011 represent the main cornerstones

⁵⁶⁴ Yechŏn (in Korean: 예천) is a South Korean city located in the central region of North Gyŏngsang.

⁵⁶⁵ "Cooperation Event," WTAO, accessed June 19, 2018, <http://www.wtao.org/Cooperation-Event>.

for the establishment of the “métiers d’art” in 2014, even though the latter document hasn’t been signed yet.

3.5.1. Japan

Beforehand, Japan established an intangible “cultural properties”⁵⁶⁶ safeguarding system, which was founded in 1950 through the Protection of Cultural Properties’ Act n. 214 and has become a reference point for all future national legislations. Japan also ratified the UNESCO 2003 Convention in 2004 and, as of today, has inscribed 21 items on the ICH representative list. So far, it is one of the countries with the highest number of cultural expressions inscribed on the UNESCO lists, second only to China (39 elements designated). The precocious interest in safeguarding non-material cultural heritage and traditional knowledge should be placed in the wider framework of the modern Japanese restoration, started during the *Meiji* government (1880-94). Nevertheless, the island’s situation following World War II shall also be considered when introducing the cultural properties protection system. Since 1870, specific laws for the protection and safeguarding of antique buildings and objects were enacted, like the Proclamation for the Protection of Antiques and Old Properties (1871-1897), followed by the Ancient Shrines and Temples Preservation Act (1897-1929), superseded by the National Treasures Preservation Law in 1929 until 1950, and lastly the Law for the Preservation of Historic Sites, Places of Scenic Beauty, and Natural Monuments (1929-1950).⁵⁶⁷ In 1949, a fire destroyed an ancient temple with all its precious paintings, boosting the government to enact a new law for the protection of cultural properties:⁵⁶⁸ the Law for the Protection of Cultural Properties.

The Japanese law divides cultural properties into four major categories, respectively: tangible, intangible, folk cultural properties, and “ancient sites, places of scenic beauty and natural monuments” as a single comprehensive group for landscapes, animals’ special habitat, plants, and traditional buildings. The act has undergone several amendments during the decades, the most interesting ones, which directly affect this thesis’ topic are: the third amendment in 1954, which added folk materials as a distinct category for the designation of important folk materials. Moreover, it launched the designation of official holders and holder groups as “holders of Important Intangible Cultural Properties,”⁵⁶⁹ commonly renamed Living National Treasures. In addition, the fourth amendment in 1975 focuses more on folk materials, where the word “materials” has been substituted with the more official “properties” to indicate cultural folk items.

⁵⁶⁶ This term was used on purpose as the first Japanese legislation defined all Japanese “cultural heritage” as “cultural property.”

⁵⁶⁷ Emiko Kakiuchi, *Cultural Heritage Protection System in Japan: Current Issues and Prospects for the Future* (Tokyo: GRIPS, 2014), 2-4.

⁵⁶⁸ This refers to the fire at the Hōryū-ji 法隆寺.

⁵⁶⁹ Noriko Aikawa-Faure, “Excellence and Authenticity,” 39.

Furthermore, the distinction between tangible and intangible folk properties was specified. However, it should be noted that unlike South Korea, the Japanese safeguarding system demonstrated some resistance when recognizing folk culture key bearers who were not comprised in the legislation, whereas elite arts representatives benefited from national protection.⁵⁷⁰ A step forward in widening the scope of the national law was done in 2004, when for the first time a traditional folk technique was selected for the national list, thus requiring the nomination of a skilled person in the preservation and transmission of know-hows.⁵⁷¹ To summarize, Japan recognised by law the protection of intangible cultural heritage under two main categories:

1. Important intangible cultural properties, namely: “drama, music, applied arts, and other intangible cultural products that are of a significant historical or artistic value to Japan;”⁵⁷²
2. Intangible folk cultural properties and conservation techniques: “manners and customs related to food, clothing and housing, to occupations, to religious faiths, and to annual festivals, folk performing arts”⁵⁷³ together with their related skills.⁵⁷⁴

The Minister of Education, Culture, Sports, Science, and Technology is in charge of the selection, while the Agency for Cultural Affairs has the duty of annually updating lists and information with the help of local communities. There is a total of three national lists, respectively: important intangible cultural properties list, important intangible folk cultural properties list, and selected conservation techniques list.

Living national treasures are selected based on several criteria, which judge the ability and skills of the holders, as well as their health conditions, received grants, number of trained successors, and their engagement and position inside the local community. Similar to the Korean system, Japan also allocates a budget for monthly allowances to holders and holding groups. However, due to a fixed budget and economic standing, designation of new holders is not increasing in these years, as the total number of possible state-designated holders has already reached its maximum. In 2013, registered living human treasures were 116 (including individual holders, and groups) and each of them was granted a stipend of 2 million Japanese yen/year, around €15,500⁵⁷⁵ today. Unlike the Korean system, the Japanese one only grants holders, whereas no recognition is given to honorary holders or training successors, which are not even appointed by the government. Other subsidies are passed by the government in order to sustain public events, seminars, and activities organised by holding groups or holders, and for the equipment and materials necessary for

⁵⁷⁰ Noriko Aikawa-Faure, “Excellence and Authenticity,” 39.

⁵⁷¹ In 1975, the folk cultural properties gained the title of cultural heritage in Japan, however it was not until 2004 that the first item was officially nominated. Noriko Aikawa-Faure, “Excellence and Authenticity: ‘Living National (Human) Treasures’ in Japan and Korea,” *International Journal of Intangible Heritage* 9, (2014): 39; Emiko Kakiuchi, *Cultural Heritage Protection System in Japan*, 7.

⁵⁷² Japan, Law for the Protection of Cultural Property, 1950, art. 2.

⁵⁷³ Japan, Law for the Protection of Cultural Property, 1950, art. 2.

⁵⁷⁴ Japan, Law for the Protection of Cultural Property, 1950, art.147.

⁵⁷⁵ Approximate calculation.

the various activities.⁵⁷⁶ Skill holders receive 1.1 million Japanese yen every year, around €7,800,⁵⁷⁷ in order to encourage the transmission of relevant skills, and the documentation and promotion through reports and surveys. Skill holding groups are also nominated by the central government and are sponsored by state funds as of 2012. Government subsidies cover the organisation of events, training lessons, seminars, publishing of reports, and documents. The amount is not fixed and may vary according to the groups.

In exchange for the money received, bearers and groups should train successors, who will be able to carry on the knowledge and transfer it to future generations; organise exhibitions and performances to promote ICH to the public and raise awareness about the importance of traditional cultures; and lastly, collect documents and materials, which are useful in documenting ICH items.

It should be noted that there is no reference to intangible cultural heritage in need of urgent safeguarding. Indeed, the legislation does not cite the need to protect ICH in danger; however, in the last report submitted to UNESCO, the Japanese government states that appropriate measures, such as documentation, should be taken if an item appears to be at risk of disappearance.⁵⁷⁸

The administration and management of intangible cultural and folk properties are assigned to the Agency for Cultural Affairs (ACA),⁵⁷⁹ which controls and supervises national designated items, whereas regional or city ones are managed by local governments.⁵⁸⁰ The ACA does not control the designated items at the local level, as they are decided by prefectures and mayors. Moreover, it seems that the two systems are not quite synchronized, as the national agency does not completely control the situation at the local level. Besides for designation, the national agency is also in charge of drafting related policies, suggestions for correct management, assistance to the bearers and local governments, and decisions on matters regarding taxation and funding of facilities. Education and promotion of cultural activities are tasks assigned to the local government administrations.⁵⁸¹

Concerning education and transmission, the government has established various courses mainly in the tertiary education sector, such as the Tokyo National Research Institute for Cultural Properties, which also comprises a department for intangible cultural heritage.⁵⁸² The institute focuses more on research

⁵⁷⁶ ICHCAP, *Intangible Cultural Heritage Safeguarding Efforts in Japan - 2013 Field Survey* (Daejeon: ICHCAP, 2013), 15.

⁵⁷⁷ Approximate calculation.

⁵⁷⁸ “Japanese Government Periodic Report on the Implementation of 2003 Convention,” ICH UNESCO, accessed June 19, 2018, <https://ich.unesco.org/en/state/japan-JP?info=periodic-reporting>.

⁵⁷⁹ In Japanese: bunkagyō 文化庁, “ACA homepage,” ACA, accessed June 19, 2018, <http://www.bunka.go.jp/english/>.

⁵⁸⁰ The Japanese Cultural Property system operates on a double level: the national one and the local one, composed of 47 prefectures and 1,740 cities, towns, and villages.

⁵⁸¹ “ACA Measures,” ACA, accessed June 19, 2018, http://www.bunka.go.jp/english/policy/cultural_properties/overview/index.html.

⁵⁸² “Department of Intangible Cultural Heritage,” Tokyo National Research Institute for Cultural Properties, accessed June 19, 2018, <http://www.tobunken.go.jp/ich-e/>.

methods and on a passive study of ICH, without being involved in practice, especially for categories related to dance, music, and festivals. On the other hand, the active participation of students and successors is the cornerstone of the Japan Arts Council and its National Theatre, where people can receive training lessons in some of the most relevant Japanese performing arts. However, one of the first approaches to traditional culture is represented by the activities organised by the Agency for Cultural Affairs, which, in order to make children from primary and secondary schools together with their parents aware of the importance of transmission of traditional cultural expression, organises public activities, exhibitions, and performances.⁵⁸³ State-led activities seem to be many, however, from the 2013 field survey conducted by ICHCAP,⁵⁸⁴ it appears that no NGOs are active in the safeguarding, promotion, and dissemination of intangible cultural heritage. This could be a negative point for the country, which should foster the creation of networks between experts, practitioners, and other people interested in the field through the establishment of active NGOs and accredited by UNESCO. However, alongside this lack in participation there are several associations of holders or holding groups, which are mainly concerned with the preservation of cultural expressions.

The International Research Centre for Intangible Cultural Heritage in the Asia-Pacific Region (IRCI) is the only international organisation with its headquarter in Japan. It is very similar to the ICHCAP and, like the Korean one, it was recognised by UNESCO in 2011 as a category two centre following the Japanese proposal in 2009. It mainly sustains and conducts research in various ICH fields and organises events, seminars, and meetings. Its activity is thoroughly outlined in public documents uploaded on the website, where annual, mid-term, and long-term plans are also shared.⁵⁸⁵

The current Japanese system for the protection of living national treasures has contributed significantly to the preservation of traditional skills and knowledges, however, it reveals some gaps. The limited number of possible candidates for the title of holders does not enable the government to freely designate other holders of important cultural expressions, thus leaving aside many other important and significant intangible practices. Moreover, the absence of honorary holders does not allow for a generational interchange between masters, possibly causing a lack of competence or specificity due to ageing or other physical problems.⁵⁸⁶ In addition, the present legislation does not allow for the withdrawal of any nomination once the title has been assigned.

⁵⁸³ UNESCO. “Japanese Government Periodic Report.”

⁵⁸⁴ ICHCAP: Intangible Cultural Heritage Centre for the Asia-Pacific Region, see section 3.4.2 “ Korean Organisations Active at the International Level.”

⁵⁸⁵ “About Vision, Mission,” IRCI, accessed June 19, 2018, https://www.irci.jp/about/vision_mission/.

⁵⁸⁶ The system does not allow for the substitution of a holder with a younger one, however the Agency for Cultural Affairs always tries to guarantee the best viable transmission quality through monitoring of holders’ activities and physical conditions.

Regarding education and other administration and management sectors, the Japanese government has established both national and international institutional networks, where the main activities are promoting traditional culture and enhancing research connected to it. This underlines a major interest in safeguarding the documents and collecting materials related to ICH expressions, rather than fostering transmission by active participation in performances.

3.5.2. France

“Maître d’art” is the official title released by the French Ministry of Culture to designate people who “distinguish themselves for the uniqueness of their know-hows (...) and their engagement in the revitalization of the [French] ‘métiers d’art.’”⁵⁸⁷ This new concept was introduced in 1994, but it is only since 2012 that the term has been officially legalised. Explicit inspiration was drawn from the Japanese living national treasures title and relevant legislation and, similarly, in France as well, once the title is assigned, it cannot be withdrawn. Even though the French system was clearly inspired by the Japanese legislation, the definitions used in the European system are based completely on a different bias. The Japanese system seems to be really different with more focus on spiritual values connected to intangible cultural heritage, whereas the French system is concerned more with artistic craftsmanship, as highlighted in the definition of Art Master. The French legislation focuses more on skills and techniques, which are closely linked to production of goods and tools, part of the French material cultural heritage. Regarding the country’s adoption of the 2003 ICHC after ratification in 2006, the government assigned the Mission on French Ethnography within the Ministry of Culture to oversee the creation of a national list for ICH. However, until now no safeguarding measures have been prescribed. Moreover, the inscription of an item on the list does not require any protective measures to be taken. Thus, it should be noted that the provisions expressed by UNESCO in 2003 had only partially been enacted at the national level.

As for the national legal framework concerning the “maître d’art,” it has been drafted in joint cooperation with the Ministry of Culture and the Ministry of Economy in order to safeguard and promote traditional craft activities. Under the title of “métiers d’art” and “maître d’art,” sixteen different categories were identified,⁵⁸⁸ which are expressions of French traditional craftsmanship, for a total of 198 professions and 83 craft sub-categories. All these categories are strongly connected to craftsmanship and the creation of objects, which have cultural and artistic value. Thus, the French legislation demonstrates a narrower

⁵⁸⁷ France, Law n. 2014-626, 18 June 2014, art. 22, in substitution to the Law 5 July 1996, art. 20.

⁵⁸⁸ The 16 macro categories are: architecture and gardens, furniture and decorating, lamp making, jewellery, luxury jewellery, goldsmithery and watchmaking, metal crafts, ceramic, crystal and glass crafts, *tableterie*, fashion and accessories, leather crafts, textiles, paper crafts, games and mechanisms, graphic and printing, restoration techniques, and musical instruments. In JORF n. 0026 31 January 2016, n. 48.

vision of ICH than those of Japan and Korea. For instance, there is no reference to festivals, ceremonies, and performing arts, whereas in Asia these categories represent some of the most important assets of national cultural identity. Along with the classification, the Ministry of Culture also provides criteria for the selection of the official Arts Masters. One of the most important elements, besides the outstanding value of the crafts, is the actual practice of the techniques and the transmission of knowledge, as well as the involvement in the innovation and development of new approaches and skills. The French law underlines, more than the Japanese or Korean ones, the changing nature of traditional practices and their living evolving character in the selection process. After designation, the masters receive an annual allowance of €16,000, in exchange for three years of training, students may also be granted national subsidies, which represent useful tools in order to encourage craftsmanship activities.

From an economic point of view, the French government, through the Ministry of Economy, has developed special laws and measures for the recognition of activities related to traditional practices, respectively: Decree n. 2006-595 on December 29, 2006⁵⁸⁹ labels and extensively describes the business activities which rely on traditional skills and know-hows, and have historical and social values for the local communities called “*entreprise du patrimoine vivant*.” In addition, the already mentioned Law n° 2005-882 on August 2, 2005, which addresses small- and middle-sized enterprises, also includes small handicraft enterprises under its regulations and utilizes the label “*entreprise du patrimoine vivant*” for the first time. In practice, these kinds of businesses may benefit from tax credit and economic support.

In order to transmit the knowledge and skills of artistic and historical value, the Institut National des Métiers d’Art (INMA)⁵⁹⁰ was founded and accredited by the French government in 2010. Besides being the most important national training centre, the institute also accomplishes five main missions: it acts as the link between the French State and masters by establishing regulations related to Arts Master’s professions and by contributing to internationalisation; it sustains research and documentation in the field; it is the point of reference both at the national and international levels for the creation of multi-disciplinary networks; it collects and offers information about traditional practices carried out in the centre; and, lastly, it helps future generations of practitioners through conferences and grants. The officially recognised “*maîtres d’art*” are established by the same institute and from its board composed of professionals and experts in the field, along with commissioners from both the Ministry of Culture and Education. The INMA operates for the whole country with its headquarter in Paris. At the regional level, various organisations accredited by UNESCO are concerned with the safeguarding and promotion of ICH.

⁵⁸⁹ This law specifies what was already declared in art. 23 in the previous Law n. 2005882 on August 2, 2005.

⁵⁹⁰ “INMA Homepage,” INMA, accessed June 19, 2018, <http://www.institut-metiersdart.org/>.

In conclusion, the French system for the safeguarding and promotion of living human treasures, or better “*maître d’art*,” tries to support the practices which are directly involved in the creation of typical French cultural objects, rather than on a vaster spectrum of cultural expressions covered by the UNESCO ICHC. The title itself stresses the more business driven character of this legislation, which tries to enhance traditional activities by supporting the rise of a more sustainable economy based on traditional craftsmanship through the Ministry of Economy. In fact, this could also be an element which the French system has in common with Korea’s new objectives for a more creatively driven project, which has the main goal of creating jobs with high-cultural value that shift current citizens’ interest from an economic to a cultural one. As for the suggestions made in the UNESCO Convention, the French government has not yet included them at the national level through *ad hoc* legislation, following the examples of Korea and Japan. This fact reveals the importance of the various activities carried out by independent organisations throughout the whole country, which foster the transmission, promotion, and protection of ICH and their bearers by different means.

Chapter 4

Case Studies

This chapter provides two useful case studies of ICH expressions in the Republic of Korea, in order to shed a light on the positive and negative effects in the application of the 1962 CPPL, first, and then of the following Act n.13248 in the Safeguarding and Promotion of Intangible Cultural Heritage. The main aim is the understanding of what kind of loopholes and virtuous aspects the Korean legislation poses in the application. The examples proposed focus on several aspects: the first, outlines the main problems faced in the identification and preservation of shamanistic rituals in the country, moreover it also stresses the building of the living national treasures characters, in the promotion of this cultural expression. The second example focuses on the importance of community engagement, and the pivotal role that regional and local administrations can play through the application of the Korean legislation, as well as the UNESCO instrument.

Section 1: Korean Shamanism

Korean Shamanism is a general term to define all the regional variations of this ancestral spiritual and popular belief, which characterizes the Korean peninsula, as well as other Asian countries. *Syamanijiim*, *musok*, or *mugyo* are the three main terms, which are usually used in order to refer to Shamanism, but it also lately acquired the title of *mishin* meaning “superstition,” especially when South Korea started the opening-up to Western culture, and the process of modernization. However, even though, Korean shamanism had been labelled by many intellectuals, politicians or even journalists as an evil practice, to the extent of asking for the police deployment,⁵⁹¹ a revival of this practice took place in the late Seventies and Eighties, thanks to the former interests of Korean scholars of folklore traditions, and later, due to the massive governmental actions in the field of cultural heritage and traditional expressions.⁵⁹² This folk expression also became the symbol of the first official presentation of the new Korea to the world, namely, the 1988 Seoul Olympic games. During this sporting venue, the stadium was permeated with the sound of

⁵⁹¹ I here refer to an editorial issued by the Korean Independent, in english language, in 1 December 1986, where the writer explicitly describes the death of an ill person, caused by the unconcerned practices of a “sorceress,” namely, a Shaman. See: Boudewijn Walraven, “Our Shamanistic Past: The Korean Government, Shamans and Shamanism,” *Copenhagen Journal of Asian Studies* 8, (1993): 5-25, <https://rauli.cbs.dk/index.php/cjas/issue/view/252>.

⁵⁹² See Chapter 3, Section 1: Historical Framework.

drums of the propitiatory performance of *kut*⁵⁹³ music and dances, which were put at the centre of the stage.⁵⁹⁴ Yet the first informal attempt to semantically modernize the spiritual practices of shamanism, through public performances, was carried out by university students at the threshold of the Olympics, as a form of protest against the oppressive governmental rules and policies. It was, thus, in this way that a centuries old tradition entered the new history of Korea, by de-contextualising rituals, which were launched in an urban and international setting from their previous village-based daily stage, and by partially depriving it of its original meaning. On the other hand, its connections with politics and the country's government represented a direct historical appanage from the pre-Chosŏn period.⁵⁹⁵

In the cultural and political turmoil, which crossed the twentieth century, the various legitimate or illegitimate presidents of the newly half-born state, were in search of a powerful symbol, yet echoing the past cultural greatness of the Korean people, in order to legitimate their power. Thus, shamanism represented the perfect tool for their political propaganda, moreover, this practice recalls the mythical origins of the Korean descendants, which traces back to Tan'gun,⁵⁹⁶ one of the most important deities in the Korean shamanism.⁵⁹⁷ It was under this framework that the CPPL was enacted, in 1962, and shamanism rapidly became part of the national cultural treasures, that had to be preserved.

The religion consists of a shaman, usually a woman with the epithet of *mudang*,⁵⁹⁸ who has healing powers, holds rites, and functions as the mediator between the world of the livings and that of the spirits. The rites performed consist of music and dances, wearing colorful clothes, each representing a different deity. Shamans were used to live in the villages, in close contact with the local community, and visit their devotees at home. It has been widely recognised that shaman culture permeated all the Korean intangible traditions of the past, thus it is the keystone for understanding Korean cultural traditions,⁵⁹⁹ as noted by Yim Suk-Jay in his folklore studies on shamanism.⁶⁰⁰ Moreover, it should be noted that, the role of women

⁵⁹³ *Kut* 굿 is the Korean name for shamanistic rituals and dances, which make up the sacrifices and offerings to shamanistic deities, in order to obtain favors and their good will.

⁵⁹⁴ Timothy R. Tangherlini, "Shamans, student, and the State: Politics and the Enactment of Culture in South Korea, 1987-1988," in Hyung Il Pai and Timothy R. Tangherlini, *Nationalism and the Construction of Korean Identity* (Berkeley: Korea Research Monograph, 1998), 127-128.

⁵⁹⁵ Boudewijn Walraven, "Our Shamanistic Past: The Korean government, Shamans and Shamanism," *Copenhagen Journal of Asian Studies* 8, (1993): 5-7, <https://rauli.cbs.dk/index.php/cjas/issue/view/252>.

⁵⁹⁶ Korean legendary King, who, according to the legend, founded the first Korean kingdom, Ko (ancient) Chosŏn around 2333 BC. It is believed that Tan'gun himself was a Shaman. For more information see: Hyun-key Kim Hogarth, *Korean Shamanism and Cultural Nationalism* (Seoul: Jimoodang, 1999), and Chun-sik Ch'oe, *Folk religion: the costumes in Korea* (Seoul: Ewha Womans University Press, 2006).

⁵⁹⁷ Hyun-Key Kim Hogarth, *Korean Shamanism and Cultural Nationalism* (Seoul: Jimoodang, 1999).

⁵⁹⁸ In Korean: 무당, 巫堂. Men as well can become shaman, in this case they are called with the title Baksu, in Korean 박수.

⁵⁹⁹ Jong-Sung Yang, *Cultural Protection Policy in Korea*, 29.

⁶⁰⁰ Professor Yu Ki-Ch'ŏn, of Seoul National University also argued that Korean shamanism was essential in order to understand Korean culture, language, and even the use of language in law documents.

is here subverted if compared to the oppressive patriarchal society, which characterized the last dynasty and, more generally, the neo-Confucianism. As a matter of fact, the spiritual mediator is often a female shaman, who holds the total authority, an atypical and anti-historical characteristic for that time, on one hand, and *ante litteram* in women's engagement in the social structure, on the other.

The Korean government started to be deeply concerned about shamans and shamanistic rituals in the late Seventies, during the Park Chŏng-Hee presidency. At first, the *Saemul undong*⁶⁰¹ advocated by the government, had called for the destruction of totem and symbols of a more spiritual, yet superstitious, past, in the wave of the modernization of the southern part of the peninsula; until when, the political leaders understood the importance of cultural identity in order to maintain their status and enhance national identity. The first nomination of a Shamanistic *gut* rite, under the Act for the Protection of Cultural Properties, arrived in 1980, with the inscription of Hahoe byeolsingut talnori.⁶⁰² Eight other types of *gut* followed the first nomination and, as of today, there is a total of eleven living national treasures, nine holding groups and two honorary holders, who are recognised by the national government and receive subsidies and monthly allowances, in exchange of their transmission and promotion efforts.

Despite the initial resistance, both by the government and the population, shamanism and Shamana have upsurged as one of the most popular and appreciated cultural traditions, in the form of performances. Some official *Mudangs* have gradually transformed into popular icons, and “superstars,”⁶⁰³ who preside over public events and even in the political arena, during the presidential elections, where Shamans may worship and invoke good spirits. It is here important to underline the fracture between the function and the form of this spiritual religion,⁶⁰⁴ which occurred once it was identified as a national important intangible cultural heritage and it was embezzled by the various governments or elected governments because of its strong cultural value. However, let apart the more anthropological issue on the spiritual function of this practice, the consequences, both positive and negative, after the inscription of this expression under the aegis of the CPPL should be further examined.

The first question should be addressed to the method of selection of *gut* worthy of preservation, which are various and disseminated all over the country. Similar ritual performances with small regional dissimilarities may sometimes occur, thus posing the issue on the identification of the most “authentic” representation among the many. The system of selection has showed some loopholes during the years, for instance, the misinterpretation of some forms as inauthentic, instead of others, which are recognised without

⁶⁰¹ See footnote 355.

⁶⁰² In Korean: 하회별신굿탈놀이, 河回別神굿탈놀이.

⁶⁰³ This title has been given by Choi Chung-Moo in her “Nami, Ch’ae and Oksun Superstar Shamans in Korea,” Ruth-Inge Heinze, *Shamans of the 20th Century* (New York: Irvington Pub, 1991).

⁶⁰⁴ Jong-Sung Yang, “Korean Cultural Protection Law with regard to Korean Intangible Heritage,” *Museum International* 56, 1-2, (2004): 185.

merit; this could happen due to the difficulty in finding a proper documentation, especially for what concerns oral transmitted traditions. In these cases, experts sometimes judge on the basis of subjective opinions, but without the support of reliable data,⁶⁰⁵ or influenced by personal or third-party interests.⁶⁰⁶ Moreover, a preference to standardised representations has emerged, thus, contributing to the depletion of regional or even local variations, existing in this field. The issue here posed recalls the theme on authenticity, which has long characterized this area of studies, yet not wholly solved. The experts' research on the true form of each intangible cultural expression poses the insolvable task of preserving the original form, without affecting the changing nature of the item, because of its living condition. The concept is also reiterated in the 2015 Act on the Safeguarding and Promotion of Intangible Cultural Heritage, which refers to an "archetype," defined as an intrinsic characteristic necessary to deem a cultural expression worthy of the title and, consequently, practitioners should demonstrate to hold that fixed "archetype."

Shamanism specialist Yang Jong-Sung has widely expressed his concern regarding the impoverishment of shamanistic rituals, dances and music variations for the above-mentioned reasons, thus, underlying the imbalances of the Korean system for the protection of ICH, which gradually brings to the loss of those local variations which are not treasured by the central government and underestimated by committee experts. The regional lists, drafted by local authorities and local experts should guarantee a wider network in the safeguarding, even of the less relevant representations; nevertheless, once a similar *gut* enters the national ranking, the unofficial ones may not receive regional recognition, thus, subsidies. The introduction of ICH in need of urgent safeguarding, in the more recent legislation, may allow further help in preserving discarded performances, when the fear of its disappearance may overcome recognition related problems.

Another interesting factor, caused by the application of the CPPL on shamanism, has been the creation of what has been called the "superstar" Shamans. Especially in the Eighties, at the beginning of the enactment of the law and for the first nominated rituals. Some Shamans like Nami, Ch'ae and Oksun were regarded as famous public figures, representing Korean cultural identity, and often presided over public events, even overseas. This has brought to a gradual commodification of the spiritual rites and a transfer of function, from the religious one to the performative, aesthetic and artistic ones. The more popular a shaman is, the more she or he gets new students and apprentices, thus, increasing her/his business volume. This fact contradicts the principles stated in the UNESCO 2016 guidelines for the good safeguarding

⁶⁰⁵ Jong-Sung Yang, "Korean Cultural Protection Law with regard to Korean Intangible Heritage," *Museum International* 56, 1-2, (2004): 186.

⁶⁰⁶ Choi Chung-Moo in her "Nami, Ch'ae and Oksun Superstar Shamans in Korea," Ruth-Inge Heinze, *Shamans of the 20th Century* (New York: Irvington Pub, 1991), 53.

practices,⁶⁰⁷ but it especially undermines the “spirit and feeling”⁶⁰⁸ of its authenticity. Another important element is represented by governmental ties, especially with the cultural heritage administration; for instance, some young shamans associate with other groups in order to increase the possibilities of gathering important contacts.⁶⁰⁹

As just outlined, the Korean safeguarding system for intangible cultural heritage has showed different problems related with the identification and promotion of ritual performances. From one hand, the ROK’s system is more inclusive, and wider in scope, if compared to the international document drafted by UNESCO. Indeed, it also includes religious rites, which, on the contrary, are consciously omitted from the international instrument. However, the governmental administration and the granting of subsidies for this spiritual cultural expression may undermine their main functions, and erode their religious values.

Section 2: *Gangeung Dano Festival*

Before Shamans could be valued as part of the Korean national list of important intangible cultural heritage, as living human treasures, national importance was accorded to the Gangneung Dano festival, in this way, also fostering the preservation of some shamanistic rituals typical of this Korean religious festival. This was a ploy employed by cultural advisors, and experts in order to include shamanism, and shamanistic practices, and their bearers inside the national ICH list.⁶¹⁰ As a matter of fact, at the beginning of the Sixties and throughout all the Seventies, Shamanism was still regarded as a form of superstition, and Shamans were considered as highly spiritual sorcerers. For this reason, the festival represents one of the most important official cultural expressions, beside the fact that, its rich syncretism (indeed: Buddhist, Confucian and shamanistic elements are merged all together in this festivity) is characteristic of Korean culture and, at large, can foster peace and mutual understanding between different cultural expressions. This four-weeks long festival became national intangible cultural heritage in 1967, as the 13th intangible cultural property, and in 2008 was inscribed on the UNESCO representative list,⁶¹¹ after being admitted in 2005 as a Masterpiece of the Oral and Intangible Heritage. This property has become the most representative example of how community and regional based efforts can succeed in promoting and safeguarding local cultural

⁶⁰⁷ UNESCO, *Basic Texts of the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage* (Paris: UNESCO, 2016), 114.

⁶⁰⁸ Nara Document.

⁶⁰⁹ Choi Chung-Moo in her “Nami, Ch’ae and Oksun Superstar,” 58.

⁶¹⁰ Boudewijn Walraven, “Our Shamanistic Past: The Korean government, Shamans and Shamanism,” *Copenhagen Journal of Asian Studies* 8, (1993): 16-17, <https://rauli.cbs.dk/index.php/cjas/issue/view/252>.

⁶¹¹ “Gangeung Danoje Festival,” ICH UNESCO, accessed June 19, 2018, <https://ich.unesco.org/en/RL/gangneung-danoje-festival-00114>.

expressions, in ROK. Moreover, through the years, planning and learning have been fundamental as managerial and administrative instruments to enhance sustainable development in the city and in the surrounding areas.

This festival lasts about 30 days,⁶¹² and it's held in Gangeung city, in the north-east part of South Korea, in the province of Gang-won Do. It's a city rich in culture with several cultural heritage properties recognised both at the national and regional levels. The Gangeung festival is the most important event organised by the city, together with various associations and communities, among these, the Gangeung Danoje Festival Committee Association⁶¹³ is the most active private organisation, which is also in charge of monitoring the administrative and management changes and their results to ameliorate the festival, year after year. The city, and its festival are also part of the Inter-City Intangible Cultural Heritage Network (ICCN) and, in 2012, the first ICCN festival was held in this coastal city. The festival has represented a hub in the development of combined cooperation between: residents, practitioners, associations, public organisations, and local government. Several private institutions take part in the organization, they are locally based and constitute a significant portion of the communities involved, respectively: Gangeung Danoje Festival Committee, Gangeung Danoje Festival Preservation Association, and Gangeung Imyeong Folk Arts Association.⁶¹⁴ The different activities, which constitute the festival, are carried out by different stakeholders. Shamanistic rituals, that open the event, are staged by hereditary shamans, who inherited their knowledge mostly from their families. The Festival Committee Association gathers a great number of members, who hold different know-hows, from confucian rites, to mask-dance drama and shamanistic rituals, as well as buddhist ones. For this reason, it is also in charge of education programs throughout all the festival time and beyond this. Useful materials are provided on the website of the association as well, in order to foster the study and comprehension of rituals and religious values, closely associated with the representations. Residents from Gangeung city and the surrounding areas are involved in the participation too. Around 2000 volunteers take part, every year, in the various activities. This represents a substantial element in the valorization of local identity and promote the communal pride between citizens. In addition, people from the city downtown are also involved, as the major events take place over there, fostering social cohesion and revitalizing the cultural life in districts, which are usually left behind. The great variety of activities and representations, which constitute the festival, reach a wide target of people, who may be interested in these different kinds of activities, workshops, cultural meetings on different themes and cultural aspects. Different ages groups are taken into consideration as well, by means of a large variety of

⁶¹² Usually from the first week of April until the first week of May.

⁶¹³ "Gangeung Danoje Festival Homepage," Gangeung Danoje, accessed June 19, 2018, <http://www.danojefestival.or.kr/default.asp>.

⁶¹⁴ UNESCO, Periodic Report no. 00781/ Republic of Korea.

activities, which are planned in order to fit different stakeholders, from children,⁶¹⁵ to university students, and older people. Beside active and voluntary participation from individual citizens and private organisations, the city government is also engaged, and in 2008 founded the Gangeung Dano Culture Creation City Promotion Bureau. The endeavours of the local administration were fundamental in creating an inviting and sustainable environment, as a matter of fact, the city dedicated bureau has promoted the festival through the construction of special areas and the renovation of the underdeveloped downtown area. A pedestrian bridge and two amenities centres were constructed, where representations and cultural activities are now hosted, moreover, the riverside has been enhanced, improving the beauty and usability of the public spaces.

In 2012, the city also hosted the first ICCN festival and positive remarks have been expressed. A study underlined the economic benefits brought to the Gangeung area during the event: almost \$12 million of total spending coming from visitors and tourists, with an effect on productivity of about \$16 million, only in the region,⁶¹⁶ which also caused an increase in employment for the entire duration of the festival. But, most of all, such initiatives have positive effects on the visibility of the city and its heritage, they foster social engagement within the area, and encourage revitalization of cultural traditions, which belong to local communities. In addition, as the ICCN is an international organisation, which creates networks together with other cities all over the world, the meeting enhanced cultural diversity and mutual understanding, by gathering different traditional expressions and showing these all in one place. In conclusion, this had a double effect: it both promoted ICH and its safeguarding, on one side, and increased tourism, thus bringing positive socio-economic effects, on the other.

This festival can represent a valuable example, at the international level, on how regional administration of important intangible cultural heritage can tangibly affect the safeguarding and promotion of cultural traditions. In the first instance, South Korea's national legislation distributes the power to nominate and administer local ICH items, both at national and local levels. This encourages local administrations to take care of their cultural expressions and gives them the opportunity to economically contribute to their enhancement. Decontextualized, or central governmental organs have sometimes proved to be ineffective and inappropriate, when talking to local realities, which, on the other hand, often face different kinds of problems as you move from one city to another. City/Do Mayors' responsibility also comprises the engagement with communities set on the territories involved in the preservation. This is one of the most important aspects, which is strongly promoted in UNESCO 2003 ICHC as well. Gangeung private and public organisations form the most active communities in the area, and they have created a solid

⁶¹⁵ For example: Workshops on masks making, or wrestling competition.

⁶¹⁶ Heek-Yung Choi and Sumi Nam, "Why local governments Matter in Implementing the UNESCO 2003 Convention: the Case for ICCN," *International Journal of Intangible Heritage* 10, (2015): 153.

network together with the local administration. In this way, a coherent system has been developed through the various festival editions, improving the quality of the safeguarding, and transmission of the item, residents' involvement, and by providing an added value to the city and surrounding areas, thanks to the improvement in tourism and the consequent increase of revenues and employment rates. The second important aspect, which shall be valued, is the establishment of an international system composed of various independent realities, which foster the development of regional-based administrations of ICH items. Through this mean, Gangeung has initiated the sharing of practical guidelines for the promotion of cultural expressions, and the amelioration of policies regarding local administrations.

Appendix A

The following pages include some articles taken from the 1962 version of the Korean Cultural Properties Protection Act, wholly amended in 1982. The full text in English can be read at the following link:

<https://ich.unesco.org/en/state/republic-of-korea-KR?info=national-laws-on-ich>.

Furthermore, the newly enacted Act on the Safeguarding and Promotion of Intangible Cultural Heritage is also included, with a selection of articles, which establish the rules to be followed for the recognition of holders, and other successors. The latter in the full version can be downloaded on the National Law Information Center website, at the following link in the English version:

<http://www.law.go.kr/eng/engLsSc.do?menuId=2&query=act%20on%20the%20safeguarding%20and%20promotion%20of%20intangible%20cultural%20heritage>.

Cultural Properties Protection Act

CHAPTER 1 GENERAL PROVISIONS

Article 1 (Purpose): The purpose of this Act is to contribute to the cultural advancement of the national as well as to the cultural improvement of all people by preserving and utilizing cultural properties.

Article 2 (Definitions): (1) In this Act, “cultural property” means the following:

(...)

2. Intangible cultural property: drama, music, dance, craftwork technique etc. and other intangible cultural expressions of high historical or artistic value;

(...)

4. Folk-lore material: public morals and customs relating to food, clothing, housing, occupation, religion or an annual event, etc. and clothes, tools or house used therefore that are indispensable to the understanding of changes and progress in the national life.

CHAPTER 2 STATE-DESIGNATED CULTURAL PROPERTIES

Article 5 (Designation of Important Intangible Cultural Properties): (1) The Minister of Culture and Information may designate certain important intangible cultural property as an important intangible cultural property, after deliberation by the Cultural Properties Committee.

(2) The Minister of Culture and Information shall recognize a holder (hereinafter understood as including a holding body) of an important intangible cultural property when he designates an important intangible cultural property in accordance with Paragraph (1).

(3) The Minister of Culture and Information may, in addition to the holder recognized under Paragraph (2), recognize another holder of an important intangible cultural property if he is worthy of it.

Article 10 (Issuance of the Certificate of Designation, etc.): (1) When designating a national treasure, a treasure of an important folk-lore material in accordance with Article 4 or 7, the Minister of Culture and Information shall issue a certificate of designation thereof to the owner of the cultural property concerned.

(2) When recognizing the holder of an important intangible cultural property in accordance with Article 5(2) or (3), the Minister of Culture and Information shall issue a certificate of recognition thereof to the holder concerned.

Article 12 (Cancellation of Designation or Recognition): When a designated cultural property which was designated in accordance with Article 4, 6 or 7 has lost its value as such or when there is a special reason to do so, the Minister of Culture and Information may, after deliberation by the Cultural Property Committee, cancel the designation thereof.

(2) When the holder of an important intangible cultural property is regarded as incompetent due to a physical or mental illness or when there is a special reason to do so, the Minister of Culture and Information may, after deliberation by the Cultural Properties Committee, cancel the recognition of the holder of an important intangible cultural property.

(3) When a holder of an important intangible cultural property dies, the recognition of the holder concerned shall be regarded as cancelled, and when all the holders of an important intangible cultural property die, the designation of the important intangible cultural property concerned shall be regarded as cancelled.

(...)

(7) When the holder of an important intangible cultural property receives a cancellation notice in accordance with Paragraph (5) or Article 9, he shall return the certificate of recognition to the Minister of Culture and Information within 30 days from the date he received the notice; however, this shall not apply if a person holding an important intangible cultural property dies.

SECTION 2 MANAGEMENT AND PRODUCTION

Article 24 (Protection and Nurturing of Important Intangible Cultural Properties): (1) The State shall protect and nurture the important intangible cultural properties for the purpose of transmitting and developing traditional culture.

(2) The Minister of Culture and Information may have the holder of an important intangible cultural property teach his skill and performing art for the purpose of transmitting and preserving the important intangible cultural property concerned.

(3) The State may bear the expenses required for the transmission teaching under Paragraph (2) as allowed in the Budget.

(4) The Minister of Culture and Information may award scholarship to the person who is trained with the transmission teaching.

(5) Matters necessary for transmission teaching and awarding of the scholarship in accordance with Paragraph (2) and (4) shall be prescribed by the Presidential Decree.

Article 25 (Administrative Order): The Minister of Culture and Information may issue following orders, when he deems it necessary for the management and protection of a State-designated cultural property:

1. An order prohibiting or restricting certain acts of the owner, holder, manager or the managing body of a State-designated cultural property when its management is considered improper or when there is a special reason to do so; (...)

Article 28 (Subsidies): (1) The State may grant a subsidy to cover the whole or a part of the following expense:

(...)

4. Expenses necessary for the protection and nurturing of an important intangible cultural property;

SECTION 3 OPENING TO THE PUBLIC

Article 36 (Opening to the Public of Important Intangible Cultural Properties): The holder of an important intangible cultural property shall, except when there is a special reason to do so, open the important intangible cultural property to the public once a year or more.

Article 37 (Expenses for Opening to the Public): All expenses for exhibition or opening to the public in accordance with each Subparagraph of Article 35 (1) or Article 36 shall be born by the State; however, the amount of income resulting from such opening to the public or exhibition may be deducted from the expenses to be born by the State.

Article 39 (Collection of Admission Fees): (1) The owner, holder or managing body of a State-designated cultural property may collect admission fees from spectators when he opens the cultural property to the public. (...)

ACT ON THE SAFEGUARDING AND PROMOTION OF INTANGIBLE CULTURAL HERITAGE

[Enforcement Date 28. Mar, 2016.] [Act No.13248, 27. Mar, 2015., New Enactment]

문화재청 (무형문화재과) 042-481-4995

CHAPTER IV RECOGNITION OF HOLDERS, GROUP HOLDERS, ETC.

Article 17 (Recognition of Holders, etc.) (1) When designating national intangible cultural heritage, the Administrator of the Cultural Heritage Administration shall recognize a holder or group holder of that national intangible cultural heritage: Provided, That the foregoing shall not apply where it is impracticable to recognize a holder or group holder of that national intangible cultural heritage by the nature of such national intangible cultural heritage, as prescribed by Presidential Decree.

(2) A group holder of intangible cultural heritage recognized pursuant to paragraph (1) shall be a non-profit corporation incorporated with the permission of the Administrator of the Cultural Heritage Administration pursuant to Article 32 of the Civil Act.

(3) The Administrator of the Cultural Heritage Administration may recognize another holder or group holder of national intangible cultural heritage, in addition to the holder or group holder of that intangible cultural heritage recognized pursuant to paragraph (1).

(4) Matters necessary for criteria, procedures, etc. for the recognition of holders, etc. shall be prescribed by Presidential Decree.

Article 18 (Recognition of Honorary Holders) (1) In any of the following circumstances, the Administrator of the Cultural Heritage Administration may recognize a holder of national intangible cultural heritage as an honorary holder in consideration of his/her achievements in providing successor training and engaging in activities for transmitting such heritage, following deliberation by the Committee. In such cases, recognition as the holder of that national intangible cultural heritage shall be deemed revoked upon recognition as an honorary holder:

1. Where it is difficult for him/her to provide normal successor training, or to engage in activities for transmitting intangible cultural heritage;

2. Where he/she files an application for recognition as an honorary holder.

(2) The Administrator of the Cultural Heritage Administration may provide a special subsidy to honorary holders.

(3) Matters necessary for criteria, procedures, etc. for the recognition of honorary holders shall be prescribed by Presidential Decree.

Article 19 (Recognition of Assistant Instructors for Successor Training) (1) The Administrator of the Cultural Heritage Administration may recognize assistant instructors for successor training, following deliberation by the Committee, from among certified trainees, to assist holders or group holders of national intangible cultural heritage in providing successor training.

(2) Matters necessary for criteria, procedures, etc. for the recognition of assistant instructors for successor training shall be prescribed by Presidential Decree.

Article 20 (Public Notice, Notification, etc. of Recognition) (1) Upon recognizing a holder, group holder or honorary holder of, or an assistant instructor for successor training, in national intangible cultural heritage, the Administrator of the Cultural Heritage Administration shall give public notice of the objectives and details of such recognition in the official gazette, and immediately notify the person or group recognized as the holder, group holder or honorary holder of, or assistant instructor for successor training, in that national intangible cultural heritage.

(2) Upon recognizing a holder, group holder or honorary holder of, or an assistant instructor for successor training in, a national intangible cultural heritage, the Administrator of the Cultural Heritage Administration shall issue a certificate of recognition to the person or group recognized as the holder, group holder, honorary holder or assistant instructor for successor training.

(3) The recognition as a holder, group holder or honorary holder of, or an assistant instructor for successor training in, national intangible cultural heritage shall take effect from the date on which the relevant person or group receives notice of such recognition.

(4) Matters necessary for the public notice and notification of recognition under paragraph (1), the issuance of certificates of recognition, etc. shall be prescribed by Ordinance of the Ministry of Culture, Sports and Tourism.

Article 21 (Revocation of Recognition as Successors, etc.) (1) In any of the following circumstances, the Administrator of the Cultural Heritage Administration may revoke recognition as a holder, group holder or honorary holder of, or an assistant instructor for successor training in, national intangible cultural heritage, following deliberation by the Committee: Provided, That if any of the subparagraphs 1 through 4 applies to him/her or it, the Administrator of the Cultural Heritage Administration must revoke the recognition thereof:

1. Where the holder, honorary holder, or assistant instructor for successor training dies;
2. Where he/she is sentenced to a fine or greater punishment in relation to the performance, exhibition, examination, etc. of traditional culture, or is sentenced to imprisonment without labor or greater punishment for other reasons and such sentence becomes final;
3. Where he/she emigrates to a foreign country or acquires citizenship of a foreign country;
4. Where a designation of national intangible cultural heritage is revoked pursuant to Article 16;
5. Where he/she becomes ineligible as a holder of the relevant national intangible cultural heritage, due to his/her physical or mental disability etc.;
6. Where a regular inspection or reinspection conducted under Article 22 confirms that the holder, group holder, or assistant instructor for successor training has become unable to practice or teach relevant national intangible cultural as the archetype thereof, because his/her skills have noticeably deteriorated;
7. Where he/she fails to provide successor training as specified in Article 25 (2) or fails to provide assistance for such training for a year, without a compelling reason;
8. Where he/she fails to make a public presentation of the relevant national intangible cultural heritage under Article 28 (1) at least once a year, without a compelling reason;
9. Where other circumstances prescribed by Presidential Decree arise.

(2) Article 20 shall apply mutatis mutandis to the public notice and notification of the revocation of recognition under paragraph (1) and the time such revocation takes effect.

Article 22 (Regular Inspections, etc.) (1) The Administrator of the Cultural Heritage Administration shall regularly inspect the status of transmission, such as successor training in national intangible cultural heritage and activities for transmitting such heritage, and other matters every five years, in order to utilize the findings thereof to formulate policies to safeguard and promote national intangible cultural heritage.

(2) Where it is necessary to conduct an additional inspection after having conducted a regular inspection under paragraph (1), the Administrator of the Cultural Heritage Administration may require his/her officials to reinspect the relevant national intangible cultural heritage.

(3) Every public official who conducts an inspection pursuant to paragraphs (1) and (2) may request a successor, relevant public institution, organization, etc. to provide cooperation, such as submitting

necessary data, and granting access to a place where intangible cultural heritage is situated, within the extent necessary for conducting such inspection. In such cases, the successor, relevant public institution, organization, etc. requested to provide cooperation shall provide such cooperation, unless there is a compelling reason not to do so.

(4) To conduct an inspection pursuant to paragraphs (1) and (2), prior notice of the inspection shall be given to the relevant successor, public institution, organization, etc.: Provided, That notice may be given after conducting an investigation, if it is necessary to conduct such investigation urgently.

(5) Every public official who conducts an inspection pursuant to paragraphs (1) and (2) shall carry an identification indicating his/her authority and shall show it to the persons concerned.

(6) The Administrator of the Cultural Heritage Administration may fully or partially delegate regular inspections and reinspections under paragraphs (1) and (2) to an affiliated institution or entrust the regular inspections and reinspections to a specialized institution or organization.

(7) The Administrator of the Cultural Heritage Administration shall utilize the findings of regular inspections and reinspections under paragraphs (1) and (2), to: 1. Designate national intangible cultural heritage and national intangible cultural heritage in need of urgent safeguarding, and to revoke such designations;

2. Recognize holders, group holders or honorary holders of, or assistant instructors for successor training in, national intangible cultural heritage, and to revoke such recognitions;

3. Matters concerning the safeguarding and promotion of national intangible cultural heritage and national intangible cultural heritage in need of urgent safeguarding. (8) Matters necessary for the subject and methods of regular inspections and reinspections under paragraphs (1) and (2), etc. shall be prescribed by Presidential Decree.

Article 23 (Matters to Be Reported)

Every successor and honorary holder of national intangible cultural heritage shall report to the Administrator of the Cultural Heritage Administration within 15 days from when his/her title or address has changed.

Article 24 (Administrative Orders)

The Administrator of the Cultural Heritage Administration may order the following measures, if deemed necessary for realizing and enhancing the value of national intangible heritage:

1. Prohibition or restriction on certain activities by a successor of national intangible cultural heritage, if such activities damage or deteriorate the archetype of that national intangible cultural heritage;

2. Prohibition or restriction on certain activities by a successor of national intangible cultural heritage, such as successor training and public presentations of that national intangible cultural, if he/she hinders the safeguarding and promotion of such national intangible cultural heritage due to a dispute arising between him/her and any other successors of such national intangible cultural heritage;

3. Requiring a successor of national intangible cultural heritage to take other urgent measures to safeguard that national intangible cultural heritage, if deemed necessary for creating an environment in which such national intangible cultural heritage can be effectively transmitted.

Appendix B

In this Appendix, National and Regional allowances and subsidies granted by the Korean government to living human treasures and other successors are reported. The sums reported are those for 2018, and the values are both in South Korean Wōn and Euro. The first table shows the national grants for the holders and successors selected at the national level. The latter one, shows the allowances and other subsidies per region, city or province, for a total of 17 provinces in South Korea and five Democratic People Republic of Korea (DPRK) regions, which are included in the Cultural Heritage Administration budget. Data were collected from the “National Intangible Cultural Heritage statistics” (“국가무형문화재 통계자료”) released on April 30, 2018 by the National Intangible Cultural Heritage Centre. The whole report can be downloaded at the following link:

http://www.nihc.go.kr/nihc/home/cop/bbs/selectBoardList.do?bbsId=BBSMSTR_000000000106&mn=KO_02_04.

NATIONAL ALLOWANCES AND SUBSIDIES TO SUCCESSORS

Governmental Economic Aid to ICH Successor inscribed on the National List (value Korean Won)							
	Holder	Apprentice teaching Assistant		Apprentice scholarship student	Holding Group	Special government grant	Funeral Compensation (hospitalization subsidies -HS)
		Holder candidate	Teaching Assistant				
Representative	1,317,000	660,000		263,000	3,500,000 group without main holder: 5,500,000	-	Honoray Holder: 1,000,000 Holder: 1,000,000 (HS - 500,000) Apprentice Teaching Assistant: 500,000 (HS - 300,000)
In need of urgent safeguarding	1,317,000						
Governmental Economic Aid to ICH Successor inscribed on the National List (value €)							
	Holder	Apprentice teaching Assistant		Apprentice scholarship student	Holding Group	Special government grant	Funeral Compensation (hospitalization subsidies -HS)
		Holder candidate	Teaching Assistant				
Representative	1,029.892	516.119		205.666	2,736.99 group without main holder: 4,300.99	-	Honoray Holder: 782.00 Holder: 782.00 (HS - 391.00) Apprentice Teaching Assistant: 391.00 (HS - 234.60)
In need of urgent safeguarding	1,029.892						

REGIONAL/PROVINCE/CITY ALLOWANCES AND SUBSIDIES TO SUCCESSORS
(data in Korean Wŏn)

	Holder	Apprentice teaching Assistant	Apprentice Scholarship Student	Honoray Holder	Candidate Holder	Holding Goup	Subsidies for public events (once a year)
Seoul	1,320,000	550,000	165,000	1,100,000	-	880,000	skills function performance: 2 mln feature performance: 4mln Association performance: 8 mln Funds for Seoul Games of Pauijoelmahulosang: 10mln
Busan	1,250,000	600,000	250,000	1,000,000	800,000	-	Group artistic attainment: 3mln Individual artistic attainment: 2.5 mln Joint staff functions: 23 mln
Daegu	1,100,000	500,000	150,000	-	-	800,000	Group event: 10.4 mln Individual event: 6.3 mln
Inch'on	1,000,000	500,000	200,000	800,000	-	400,000	Skills function event: 2.1 mln Performance or song event: 4.99 mln Group event : 5, 252, 500 Rite performance: 6.935 mln
Gwangju	1,100,000	550,000	200,000	none	-	700,000	Total: 70mln
Daejeon	1,000,000	450,000	100,000	-	450,000	7,200,000/year	57mln/year
Ulsan	1,000,000	500,000	200,000	-	-	Pottery association: 4,500,000 Yilsandong sacrifice: 700,000	Individual performance: 2.5mln Group performance: 3.5
Sejong	1,000,000	-	-	-	-	1,000,000	Skilled: 2mln Performer: 4mln Group: 8mln
Gyeonggi	1,300,000	500,000	-	-	-	800,000	200,500,000 for joint events
Gangweon	Individual: 1,200,000 of a Group: 1,000,000	Individual: 600,000 of a Group: 500,000	200,000	Individual: 1,200,000 of a Group: 1,000,000	-	900,000	Individual Performance: 2mln Group performance: 3.5 mln
Ch'ungpuk	900,000	400,000	150,000	none	-	900,000	Skills performance: 1.8 mln Feature event: 2 mln Group Performance: 4mln Joint events: 30 mln
Ch'ungnam	1,100,000	500,000	-	900,000	-	-	Individual Performance: 2.4mln Group performance: 7.5 mln
Jeongpuk	1,000,000	400,000	200,000	800,000	-	with main holder: 800,000 without main holder: 1,000,000	Individual Performance: 2.5mln Group performance: 3.4 mln
Jeongnam	900,000	350,000	100,000	-	-	500,000	Individual Performance: 2 mln Group performance: 7.5 mln
Gyeongpuk	900,000	350,000	100,000	-	-	with main holder: 800,000 without main holder: 1,000,000	Individual Performance: 2 mln Group performance: 4 mln
Gyeongnam	800,000	no funds	none	640,000	350,000	600,000	Individual Performance: 1.52 mln Group performance: 2.2 mln
Jeju	800,000	400,000	200,000	800,000	-	1,000,000	2,000,000 - 20,000,000
5 DPRK Regions	Ministry of Public Administration and Security will issue to DPRK 5 regions committee a budget for people's current subsidies for a total of 43,000,000 Won /year (each region for an average of 2,870,000)						

REGIONAL/PROVINCE/CITY ALLOWANCES AND SUBSIDIES TO SUCCESSORS
(data in Euro)

	Holder	Apprentice teaching Assistant	Apprentice Scholarship Student	Honoray Holder	Candidate Holder	Holding Goup	Subsidies for public events (once a year)
Seoul	1,032	430	165	129	-	688.2	skills function performance: 1,564 feature performance: 3,128 Association performance: 6,256 Funds for Seoul Games of Puijjoelmahulhosang: 7,820
Busan	978	470	196	782	625	626	Group artistic attainment: 2,346 Individual artistic attainment: 1,955 Joint staff functions: 17,986
Daegu	861	391	117	-	-	625	Group event: 8,133 Individual event: 4,927
Inch'on	782	391	156	625	-	313	Skills function event: 1,642 Performance or song event: 3,902 Group event : 4,107 Rite performance: 4,523
Gwangju	861	432	156	none	-	547	Total: 54,740
Daejeon	782	352	78	-	352	5,630/year	44,574 min/year
Ulsan	782	391	156	-	-	Pottery association: 3,519 Yilsandong sacrifice: 547	Individual performance: 1,955 Group performance: 2,737
Sejong	782	-	-	-	-	782	Skilled: 1,564 Performer: 3,128 Group: 6,256
Gyeonggi	1,017	391	-	-	-	626	156,711 for joint events
Gangweon	Individual: 938 of a Group: 782	Individual: 469 of a Group: 391	156	Individual: 938 of a Group: 782	-	703	Individual Performance: 1,563 Group performance: 2,736
Ch'ungbuk	703	313	117	none	-	703	Skills performance: 1,407 Feature event: 1,563 Group Performance: 3,126 Joint events: 23,448
Ch'ungnam	860	391	-	703	-	-	Individual Performance: 1,876 Group performance: 5,862
Jeongbuk	782	313	156	625	-	with main holder: 625 without main holder: 782	Individual Performance: 1,954 Group performance: 2,657
Jeongbuk	782	313	156	625	-	with main holder: 625 without main holder: 782	Individual Performance: 1,954 Group performance: 2,657
Jeongnam	703	274	78	-	-	391	Individual Performance: 1,563 Group performance: 5,862
Gyeongbuk	703	274	78	-	-	with main holder: 625 without main holder: 782	Individual Performance: 1,563 Group performance: 3,126
Gyeongnam	625	no funds	none	500	274	547	Individual Performance: 1,188 Group performance: 1,720
Jeju	625	313	156	625	-	703	1,563 - 15,632
5 DPRK Regions	Ministry of Public Administration and Security will issue to DPRK 5 regions committee a budget for people's current subsidies for a total of 33,608 €/year (each region for an average of 2,243 €)						

Conclusion

Results

This study has contributed in highlighting a comprehensive analysis of the ROK's legislation in the safeguarding of intangible cultural heritage and its bearers. The CPPL, enacted in the 1962, has been considered, during the decades, a useful example in the application of the suggestions made in the 2003 UNESCO Intangible Cultural Heritage Convention. At the forefront of the best national legislations in the safeguarding and promotion of ICH and LHT, the Republic of Korea has also demonstrated great engagement in the decisional process for the drafting of the 2003 ICHC, with the proposal in 1993 of a Living Human Treasures System and in 1997 its support to the Masterpieces program. Not only ROK has directly contributed in shaping these international instruments, but it was also influenced by these at the national level. Especially the 2003 Convention had important effects in up-dating the new Korean protection system, represented by the newly enacted law n. 13248, entered into force in 2016. Many additions to the new text has demonstrated the important sensibility of the Korean government in taking the UNESCO work into consideration and create an *ad hoc* act, which only protects ICH and practitioners, whereas the CPPL was a comprehensive system for all cultural properties, with few provisions regarding intangible heritage. In this case, the Korean government demonstrates great flexibility in adapting an already well-built legislation, with reference to the CPPL, and encouraging the transmission of important intangible cultural items, once again, and with even more attention paid to the safeguarding and promotion of such cultural expressions. The study has tried to outline all these features, by making a comparison between the 1962 act and the 2015 one. Furthermore, several elements have been stressed, which are in common with the international instrument. For instance, the safeguarding of ICH in need of urgent safeguarding has been an addition modelled on the UNESCO suggestions, as well as the introduction of nomination without living human treasures neither community of practitioners. This change introduces a new possibility, which wasn't contemplated in the previous instrument. Even though, this could seem a weaker point, if we affirm that every intangible cultural heritage should be transmitted within a community and by individual bearers in order to be living and not state-led re-created, however the amelioration of the national legislation should be reconsidered in the light of the actual status of certain kinds of intangible cultural properties, and their gradual disappearance. This change can guarantee national protection, even though there is no disposal of nominating practitioners or groups of bearers, something that, on the other hand, could have contributed to the acceleration of the disappearance of the same item. Moreover, this doesn't mean that there aren't any people, who foster the transmission, in fact, the nomination of LHT and ICH are here considered as separate issues to be addressed to. In this sense,

the new legislation traces the international UNESCO instrument, and create a distinction between the formal nomination of the intangible cultural property and the community of holders.

Another important aspect, stressed by this study, is the close network created by South Korea between practitioners, public and private organizations, as well as government or regional administrations. These four, or even five, main stakeholders cooperate in the promotion and safeguarding of each practice, both at the national and regional levels. Many partnerships have been established also at the international level, through the efforts of NGOs and UNESCO category two centre (ICHCAP), which has set its headquarter in South Korea. A mutual cooperation between States Parties to the ICHC is also encouraged by UNESCO, as written in section V under the name “international cooperation and assistance,” of the same Convention text.

The strong collaboration between community of practice and NGOs has give raise to the creation of several databases, which contribute to the exchange of information between practitioners, all over the world. Development of open-source and accessible online archives allow a wider public to access to important data regarding living human treasures, intangible cultural heritage properties, and practices. Nevertheless, this activity not only creates the possibility of an easier access to information, it also fosters relationships between the various stakeholders, and encourage inclusiveness between practitioners and institutions at all levels. It is, thus, a useful practice in order to ameliorate social inclusion and cohesion, and raise awareness on the need to transmit traditional culture to future generations.

The international networking has, on the other hand, contributed in the organisation of joint initiatives between states, and fostered peace and mutual understanding between the parties. This is an important element, which should be encouraged especially in this historical period of upsurge of local nationalisms and questions regarding national identities. In this way, Korea, as well as other Member States to the Convention, have contributed to the peaceful understanding of cultural differences, which enrich the world, rather than creating conflict. In some way a reflection of the Convention on the Diversity of Cultural Expressions (UNESCO, 2005) can be here foreseen in the activities organised by this Asian country.⁶¹⁷

Finally, the activities carried out by Korea delineates the efforts done in the promotion of living human treasures, as well as group of holders. Beside the well-known national economic support granted as a monthly allowance and other kinds of subsidies, the country has strongly encouraged during these decades, from the enactment of the 1962 Act until nowadays, the engagement of practitioners and local communities in the safeguarding, promotion, documentation, and transmission of important cultural expressions. As above-mentioned, many NGOs are involved in the organisation of activities. Practitioners

⁶¹⁷ The Republic of Korea ratified the UNESCO Convention on Diversity of Cultural Expressions in 2010.

can often use these organisations' spaces, in order to pass down their knowledge and know-hows, and they are often involved by these same in the promotion through activities and events. In other words, the NGOs provide the hardware, such as spaces, buildings, administrative and management skills; on the other hand, practitioners, and communities constitutes the software of the various programmes; they offer their knowledge, know-hows, which are at the core of all the events.

Topics to further analyse

Through the examination of the various documents and instruments I had to select specific contents, in order not to lose sight of the main topic, which directly refers to the living human treasures and the safeguarding measures enacted by the government. For this reason, important issues such as the intellectual property rights protecting ICH and LHT at the national level, an in depth analysis in the activities of the Administration of Cultural Heritage, and the penalty provisions regarding violation of administration, management and other improper use of designated intangible cultural heritage have been omitted on purpose. Especially for what concerns the first theme, the South Korea National Research Institute of Cultural Heritage (NRICH) has promoted a research in the field of IPRs connected with traditional culture and practitioners in 2012, in order to explore the important issues during the drafting process of the 2015 legislation. However, as stated in the introduction, it would have been out of tune to present such a topic, as the same UNESCO ICHC text doesn't take any provisions with regard to this topic.

My hope for the future is to keep on analysing more in detail the Korean system, by including the topics above-mentioned, as well as the comparisons with other national systems, which were superficially taken into consideration in this thesis, such as the French and Japanese ones, or even completely put aside, like those of Indonesia, Vietnam, Cambodia, or some experiences in the African continent, as well.

On the other hand, the Korean legislation showed some gaps too. For instance, the lacking provisions and suggestions regarding the items in need of urgent safeguarding, which is a new entry in the last legislation approved in 2015, but that is still too generic and does not provide specific measures to be adopted. This represents a key issue, that should be further analysed at the national and governmental levels. Moreover, insufficient rules for NGOs establishment and their administration of ICH also represent another shortage in the law text. Especially for what concerns the religious manifestations, I hope in the near future, the Korean government will take into more consideration the development of a more appropriate system, which tries to exclude any form of commodification and expropriation of the role and function of the spiritual element connected with the cultural expression.

In Conclusion, even though several revisions and enactments have been released through the years, the Korean system also shows some weaknesses in the application of the relative laws. For instance, one of the case studies has demonstrated how, for some kinds of intangible cultural properties, it is still difficult to establish some correct identification and decision criteria. In addition, another problem could be faced when identifying and granting specific expressions instead of other similar ones, this is the presence of experts' subjective influences during the selection. Beside the problem faced during the identification, the question raised by the legislation text, which refers to the "archetype," strongly reflects the issue on "authenticity," which has dominated this field of study. For these living and changing cultural expressions, it is difficult and risky to preserve the authentic form because this could lead to the risk of fossilizing the practices and, thus, losing the vitality of the transmission and their true manifestation. It is up to the holding communities to determine the changes and the new processes regarding their own practices, in this respect, the Korean legislation, which is strongly controlled by the government, could face several difficulties in adapting its perspective and changing its reference points.

Fulfilled and Unfulfilled Expectations

As for my initial opinion regarding the Korean system for the protection of important intangible cultural heritage and its holders, it was confirmed, and I shall say, even outdone. The innovations introduced inside the last national legislation have confirmed my idea of Korea as a country which has a really high value of its traditional cultural expressions. In addition, the attention paid to the changes undergone at the international level, through the efforts of UNESCO and other international actors, and exemplified in the 2003 Convention, as well as in the 2005 one, or even the European initiatives in order to foster local communities, and cultural diversity, all play a crucial role inside the application of the national legislation in South Korea. However, I must express my concern that some activities may be more focused on business outcomes rather than on culture revitalization. In my opinion, this is a problem, which should be seriously addressed by the Korean government from the inside.

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