

INTERNATIONAL ARTS LAW UPDATE

RECENT DEVELOPMENTS

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[247] The 32nd General Conference of UNESCO adopted the *Convention on the Safeguarding of the Intangible Cultural Heritage* in October 2003. In the June 2002 issue of this Journal, 'Recent developments' recorded that the 31st General Conference had invited the Director-General 'to submit to its at its 32nd session a report on the situation calling for standard-setting and on the possible scope of such standard-setting, together with a preliminary draft international convention'. For various reasons, we expressed the hope that the document to be presented would indeed be a preliminary draft and not one expected to be adopted *instanter*. Such was not to be. UNESCO has produced an international convention of a strange character with a unique philosophical approach. It is based on the *Convention concerning the Protection of the World Cultural and Natural Heritage* 1972. But also of great significance are two other UNESCO initiatives: that concerning 'Living National Treasures' and 'The Proclamation on the Oral and Intangible Heritage'. This note will concentrate on these two programmes in order to indicate their influence on the Convention which will itself be the subject of the next issue of 'Recent developments'.

Living National Treasures

In 1993 UNESCO distributed to Member States a volume of documents with a covering letter by Federico Mayor the then Director-General. This invited States to create a system of Living National Treasures and forward the list of such 'Treasures' to UNESCO.

The concept of Living National Treasures originated in Japan. Under art 56-3 of the *Law for the Protection of Cultural Properties* 1950 the responsible Minister may designate important intangible cultural properties and single out the holders of such properties. The Government of Japan thus gave special recognition to the bearers of the skills and techniques essential for the continuation of selected important intangible

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cultural properties. In 1964 the Republic of Korea also introduced such a system. The Cultural Property Protection Act provides for the designation and cancellation of important intangible cultural properties as well as the recognition of, and withdrawal of rights of, the holders of such properties.

[248] When an important cultural property is designated, a person who has mastered, preserves and is capable of demonstrating the performing skill or technique of the important intangible cultural property should be recognized as the holder of the cultural property for its transmission. However, in case the performing skill or technique of an important intangible cultural property, like drama or rites for example, cannot be demonstrated by an individual by nature or there are more than one individual deserving recognition as the holder, an organization which is capable of demonstrating the performing skill or technique of the important intangible cultural property concerned in its original form may be recognized as the holder.²

A number of other countries have introduced somewhat similar schemes: for example, Philippines' 'National Artists', Thailand's 'National Artists Project', France's 'Maitres d'art', United States' 'National Heritage Fellowships in the Folk and Traditional Arts'. Different methods may be used in different places and the scheme may have legislative backing or be implemented administratively but in all cases the objective is the same: to honour the holder of traditional skills and ensure the continuance of those skills.

The documents distributed by UNESCO contained one on 'Guidelines for the Creation of a Living National Treasures System'. This contains material on legal provisions; identification and designation; criteria of selection; number of nominees per year; rewards granted to appointees; duties of appointees; cancellation of appointments. The system envisages rewarding persons embodying the skills that the State considers should be preserved. The reward should encourage them to continue with their own work; develop and expand the frontiers of that work where desirable, and in all cases, train younger people to take their place in due course. The actual reward can take a number of forms: public recognition that the appointee has reached

² Office of Cultural Properties, *The Preservation and Transmission System for the Intangible Cultural Properties of the Republic of Korea* (Office of Cultural Properties, Seoul, 1994) 16.

a high rank within society; continuing publicity given to the appointee's work; financial incentives.

The scheme for 'Living National Treasures' seeks to preserve the skills and techniques necessary for the continuance of aspects of a State's culture that are considered to have high historical or artistic value. It emphasizes the unique. The danger is that these skills and techniques will ossify and become increasingly less relevant to the society that seeks to preserve them.

Proclamation of Masterpieces of the Oral and Intangible Heritage of Humanity

Introduced in 1997, this programme seeks to raise public awareness of the value of this heritage and encourage States to take legal and administrative measures to safeguard it. It was a response to a number of concerns, one of which was the disappearance of story telling in traditional areas of certain cities. Similar to the 'Human Living Treasures' programme, it seeks the unique — the 'masterpiece'. It raises questions both philosophical and practical. Despite a lack of answers to these concerns, items already proclaimed as 'masterpieces' are to be incorporated into the Representative List of the Intangible Cultural Heritage of Humanity established under the *Convention on the Safeguarding of the Intangible Cultural Heritage* 2003.

The procedure for selecting 'masterpieces' is modelled on that used in respect of nominations for the World Heritage List under the *Convention concerning the Protection of the World Cultural and Natural Heritage* 1972. States may nominate cultural manifestations with, *inter alia*, descriptions of what they are, why they should be selected and proposals for preservation management. According to the terms of reference, the manifestation must be either a strong concentration of the intangible cultural heritage of outstanding value or a popular and traditional cultural expression of outstanding value from a historical, artistic, ethnological, sociological, anthropological, linguistic, or literary point of view.³ Nominations go [249] to various organizations for assessment. These include the International Council for Traditional Music, the International Union of Anthropological and Ethnological Sciences and the

³ UNESCO, *Implementation Guide, Proclamation of Masterpieces of the Oral and Intangible Heritage of Humanity* (UNESCO, Paris, 2001).

Comité International Permanent de Linguistique. An international jury makes the final decision as to what will be included in the list of 'masterpieces'.

The first Proclamation in 2001 gave recognition to 19 'masterpieces'. A further 28 were Proclaimed on 7 November 2003. The UNESCO web site describes three of these:

A thousand year old Chinese musical idiom that is mastered by a mere 50 people, the know-how of itinerant doctors in South America who are familiar with the properties of almost 1,000 plant species, a communication system among different language communities in Vanuatu using finger drawings in sand.⁴

This process requires assessment of radically different cultural manifestations. Compilation of the World Heritage List already illustrates the difficulty of making choices between places in different parts of the world and, indeed, between places in the same part. Yet that List is dealing with physical structures and sites. The 'Masterpieces' programme deals with language, literature, music, dance, games, rituals, customs and so on. It would be hard to choose one example from the same genre (for example, puppets from Indonesia, Sicily, Viet Nam) yet alone compare like with what is unlike.

This poses a number of questions:

Why should these cultural phenomena be preserved and revitalized? Can culture and folklore be preserved? Should they be preserved? Might preservation lead to fossilization and alienation from the living sociocultural source, or will it revitalize culture and foster the invention of tradition? What happens to culture and folklore when they are politicized through international and national governmental protection programmes? Shouldn't tradition always be subject to change — both invention and development and decline and deterioration?⁵

⁴ See <<http://portal.unesco.org/en/ev.php>>.

⁵ P J M Nas, 'Masterpieces of Oral and Intangible Culture: Reflections on the UNESCO World Heritage List' (2002) 43 *Current Anthropology* 139.

Nas does not really answer these fundamental questions. He considers the programme to be 'important both for society and for anthropology'.⁶ Commentators on Nas' article, while endorsing the underlying rationale of the programme, expressed reservations.

Governments will pay people to dance dances the use of which no one sees any longer, to sing incomprehensible songs that have long since lost their meaning, to perform mystery plays in which no one now believes. Why do this? Why spend a lot of money and work to make a list of such endangered masterpieces. Once traditional activities have lost their function, how can a government guarantee that subsidies will produce their maintenance?⁷

[250] The practical problem with the 'Masterpieces' programme concerns the physical safeguarding of the selected cultural manifestation. How does one safeguard a language when few native speakers are still alive and the next generation can see no benefit in learning it? Certainly some may be induced to use it by incentives but these cannot last forever. As with most of these cultural manifestations, unless there is a real desire on the part of the people from whom they spring, they will not flourish. The building of museums, recording of ceremonies, staging of festivals will not safeguard the life of this part of a culture. They may well signal its end as a staged and managed culture takes the place of spontaneity. The ultimate danger is the removal of the cultural manifestation from the hands of those who created it into those of government bureaucrats and academic researchers.

The 'Masterpieces' programme is an attempt to overcome some of the byproducts of globalization. It elevates the unique from the developing uniformity of international culture. This objective is to be commended. However, does it achieve its objective or does it betray what it seeks to safeguard? The answer is crucial seeing the underlying influence of this programme on the *Convention on the Safeguarding of the Intangible Cultural Heritage* 2003. Or has UNESCO, overly influenced by the public reaction to the World Heritage List, taken a wrong turning?

⁶ Ibid 143. The article is marred by the author's belief that somehow the 'Masterpieces' would go on the World Heritage List.

⁷ H J M Claessen, 'Masterpieces of Oral and Intangible Culture: Reflections on the UNESCO World Heritage List: Comment' (2002) 43 *Current Anthropology* 144.