

# UNESCO's Contribution to the International Protection of Tradition Cultural Expressions and Knowledge

Adel I. Abdullin<sup>1</sup>

<sup>1</sup>Kazan Federal University, Faculty of Law, Russia  
Email: info@Abdullin.su

Asiia Sh. Gazizova<sup>2</sup>

<sup>2</sup>Kazan Federal University, Faculty of Law, Russia  
Email: info@ores.su  
Tel. +7 (937) 526-38-81

## Abstract

This paper is devoted to the analysis of the approach of UNESCO to the protection of traditional cultural expressions and knowledge. As a method, the authors consider the chronological sequence of the inclusion of this issue in the agenda at international conferences. As a result, intangible cultural heritage propagated is constantly recreated by communities and groups depending on their environment, their interaction with nature and their history and forms with them a sense of identity and continuity. In conclusion, UNESCO follows a comprehensive approach, unlike the World Intellectual Property Organization, which focuses on preventing and warning on their illegal use.

**Keywords:** Traditional Knowledge, Cultural Expressions, Intangible.

## *La contribución de la UNESCO a la protección internacional de las expresiones culturales y del conocimiento*

## Resumen

Este documento está dedicado al análisis del enfoque de la UNESCO para la protección de las expresiones culturales tradicionales y el conocimiento. Como método, los autores consideran la secuencia cronológica de la inclusión de este tema en la agenda de las conferencias internacionales. Como resultado, el patrimonio cultural intangible que se propaga es recreado constantemente por comunidades y grupos que dependen de su entorno, su interacción con la naturaleza y su historia, y forma con ellos un sentido de identidad y continuidad. En conclusión, la UNESCO sigue un enfoque integral, a diferencia de la Organización Mundial de la Propiedad Intelectual, que se centra en prevenir y advertir sobre su uso ilegal.

**Palabras clave:** Conocimiento Tradicional, Expresiones Culturales, Intangible.

## **1. Introduction**

The World Intellectual Property Organization (WIPO) calls folklore as traditional cultural expressions and regards it as one of the objects of intellectual property law, although it has certain specific features. At the same time, the United Nations Educational, Scientific and Cultural Organization (UNESCO) uses the term intangible cultural heritage to refer to folklore, while emphasizing its cultural aspect. This discrepancy can be explained by the various goals facing the organizations. If for the World Intellectual Property Organization the goal is to improve the protection of intellectual property throughout the world and harmonize national legislation in this area, then for UNESCO it is to contribute to strengthening of peace and security by expanding the cooperation of peoples in the field of education, science and culture in the interests of ensuring universal respect for justice, law and human rights, as well as fundamental freedoms (Sherkin, 2001).

Initially, both organizations conducted joint work in the field of the protection of folklore. In 1976, the Tunisian Model Law on Copyright for Developing Countries, section 6 of which was devoted to national folklore, was adopted by the Committee of Government Experts with the support of the World Intellectual Property Organization and UNESCO. However, in 1978, UNESCO and the World Intellectual Property Organization officially agreed that UNESCO will work on preserving folklore on an interdisciplinary basis and within the framework of a global approach, while the World Intellectual Property Organization in its activities will cover only aspects related to copyright and intellectual property. In 1982, both organizations jointly developed a draft of the Model Provisions of a national legislation on the protection of works of folklore against unlawful use and other harmful actions. This paper will only consider the independent initiatives of UNESCO, the implementation of which touched upon the issues of protecting traditional cultural expressions and traditional knowledge (to a lesser extent) (IGC, 2016).

## **2. Results and discussion**

The preparation in 1971 of a document entitled the possibility of creating an international instrument for the protection of folklore could be considered as the first step of UNESCO. The study did not propose a specific solution, but it was recommended that the work on the protection of folklore become urgent. In general, in the 1970s, interest in traditional culture has been increased. This was largely due to the collapse of the colonial system. Independent states began to revive traditions and national identity. An important milestone was the adoption in 1972 of the Convention on the Protection of the World Cultural and Natural Heritage at the seventeenth session of the UNESCO General Conference. The main objective of the Convention is to unite the efforts of the international community to identify, protect and comprehensively support cultural monuments and natural objects of outstanding universal value. Despite the importance of this convention, its action does not extend to intangible cultural heritage, but it was a serious step towards the protection of cultural heritage in general (Akagawa, 2016).

In 1982, UNESCO created the Committee of Governmental Experts on the Protection of Folklore, the main outcome of which was the development of the Recommendation on the Preservation of Traditional Culture and Folklore in 1989. This document became the first international instrument providing direct protection and preservation of traditional culture and folklore. The format of the recommendation, rather than the treaty, had certain drawbacks due to the lack of binding legal force, however, it allowed the interested states to develop legislation in this area. Among the important considerations noted in the preamble of the Recommendation are the social, economic, cultural and political implications of traditional culture and folklore. Folklore in a recommendation is defined as a set of creations based on the traditions of a cultural community, expressed by a group or individuals and recognized as reflecting the aspirations of the community, its cultural and social identity; folklore patterns and values are transmitted orally, by imitation or in other ways. It is separately noted that its forms include, in particular, language, literature, music, dances, games, mythology, rituals, customs, crafts, architecture and other types of artistic creation. Thus, it can be argued that this Recommendation covers not only folklore (or traditional cultural expressions in the language of the World Intellectual Property Organization), but also traditional knowledge (Aikawa, 1999).

Despite a number of shortcomings, the recommendation was recognized as successful and contributing to raising the level of awareness of the international community on the problem of the protection of intangible cultural heritage. Thus, for example, in 1997, intangible heritage became one of the most important priorities in UNESCO's cultural activities in the opinion of Member States gathered at the General Conference. The conference at UNESCO headquarters in Paris in 1993 is also considered as an important event. It is here that UNESCO for the first time officially introduced the term intangible cultural heritage, using it for the new name of the program, which in 1991 was named Non-Physical Heritage. Conference participants stressed the need to revitalize traditional cultures by encouraging their adaptation to the modern world. To realize this intention, the key principles of the intangible cultural heritage program were identified during the conference:

- Not to represent intangible cultural heritage as something frozen, but to consider it as a continuously evolving object;
- Do not pull the intangible heritage out of its original context;
- Be aware of the obstacles threatening the preservation of an intangible cultural heritage;
- Pay more attention to the intangible heritage of hybrid crops that develop in urban areas;
- Use a different methodology for intangible cultural heritage than for tangible cultural heritage.

The first stage of this new program was the studying of national systems to determine whether official recognition of people with traditional skills is ensured in any state. It was found that Thailand and the Philippines also recognize traditional artisans, in addition to Japan and South Korea. Based on the results of the initial survey, the agreement was reached on creating legislation to safeguard the intangible heritage; identifying owners of relevant know-how; forming a list of national types of intangible heritage to be protected, and preparing a list of potential candidates for inclusion in the list of national human wealth. In 1997, the UNESCO General Conference decided to create the program proclaiming the masterpieces of the oral and intangible heritage of mankind. As a result of the three Proclamations in 2001, 2003 and 2005, 90 forms of cultural expression and cultural spaces from 70 countries had received recognition. More than one hundred countries participated in the program, and more than 150 applications were submitted for consideration. According to the results of the first Proclamation in May 2001, the first 19 masterpieces were added to the List of Masterpieces of the Oral and Intangible Cultural Heritage of Mankind; in November

2003, it was added with 28 more forms of cultural expression and cultural spaces. The last Proclamation took place in November 2005, when 43 more masterpieces were added to the List of Intangible Cultural Heritage of Humanity (Aikawafaure, 2009).

The program identified two categories of intangible cultural heritage: 1) manifestations of folk and traditional culture, and 2) cultural spaces or places where folk and traditional activities are concentrated. At the same time, cultural spaces or cultural forms proclaimed as the masterpieces of the oral and intangible heritage of humanity must be of exceptional value, in the sense that they must be either a concentrated expression of an intangible cultural heritage of exceptional value, or a manifestation of folk and traditional culture (folklore) that have exceptional value for history, art, ethnology, sociology, anthropology, linguistics or literature. Masterpieces were selected based on six criteria. The forms of manifestation of folk and traditional culture or cultural spaces proposed for consideration should (Mccann, 2001):

- (i) Have a unique value, being the masterpieces of the creative genius of mankind,
- (ii) Have a deep connection with the traditions or cultural history of the respective community,
- (iii) Serve as a means of asserting the cultural identity of the peoples and cultural communities concerned,
- (iv) Be distinguished by high skill and quality of the technique of execution, and
- (v) Be threatened with extinction, either because of the lack of the means necessary to provide protection and safeguarding or as a result of processes of accelerating transformations, urbanization or acculturation (IGC, 2004).

During the procedure of proclaiming masterpieces, for example, playing the duduk (Armenia), the Nogaku Theater (Japan), and the process of making lyk fabric (Uganda) were recognized. According to Russia's idea, the cultural space and oral culture of the Semeye community and the Yakut heroic epos Olonkho entered the List of Masterpieces. In 2001, UNESCO adopted the Universal Declaration on Cultural Diversity. Of particular importance for traditional cultural expressions is Article 8 of the Declaration, which refers to cultural objects and services as special goods. This article notes that special attention should be paid to an equitable accounting of the rights of authors and artists, as well as the specifics of cultural objects and services, which are the carriers of identity, value and meaning, should not be treated as ordinary objects or consumer goods. The Declaration is accompanied by the Main Action Plan for its implementation, including developing policies and strategies for the preservation and promotion of cultural heritage, in particular, oral and intangible ones, and the fight against illegal trade in cultural goods and services, as well as respect and protection of traditional knowledge, in particular accumulated by indigenous peoples; recognizing the role of traditional knowledge, especially in environmental protection and natural resource management, and promoting synergies between modern science and local knowledge. Unfortunately, this document was only advisory in nature; however, it sets the direction for further steps (Lixinski, 2013).

The program for the proclamation of masterpieces of the oral and intangible heritage preceded the adoption in 2003 of the Convention for the Safeguarding of Intangible Cultural Heritage. The Convention has proposed a holistic approach to safeguarding intangible heritage. Its development was relatively short, the project was drafted over two years, and to date 174 countries are parties to the Convention. One of the defining aspects of the Convention is the idea that intangible cultural heritage is not a cultural object, but rather refers to the social and cultural processes which products are these objects. The question of what falls under the definition of intangible cultural heritage was the subject of many discussions during the 2002 meeting of the limited Drafting Group. In the end,

taking into account the views of UNESCO member states on this topic, flexible approach to the definition was adopted to avoid duplication with the mandate of other international organizations (primarily the World Intellectual Property Organization and the WTO).

The final definition of intangible cultural heritage contained in the Convention included customs, forms of representation and expression, knowledge and skills as well as related tools, objects, artifacts and cultural spaces recognized by communities, groups and, in some cases, individuals in as part of their cultural heritage. The definition specifies that such intangible cultural heritage propagated is constantly recreated by communities and groups depending on their environment, their interaction with nature and their history and forms in them a sense of identity and continuity, thereby promoting respect for cultural diversity and human creativity. Article 2 (1), (2) of the Convention contains examples of the areas in which intangible cultural heritage is manifested: a) oral traditions and forms of expression, including language as a carrier of intangible cultural heritage; b) performing arts; c) customs, rituals, celebrations; d) knowledge and customs relating to nature and the universe; (e) knowledge and skills related to traditional crafts.

### **3. Summary**

If to analyze the presented definition in terms of the approach of the World Intellectual Property Organization, then it is possible to identify elements relating to both traditional cultural expressions and traditional knowledge. Thus, examples d and e given in the text of the Convention are well suited to the working definition of traditional knowledge of the World Intellectual Property Organization: this is knowledge created, maintained and developed by indigenous peoples and local communities, and related to their national or social identity and / or cultural indigenous heritage or integral parts that are passed on from generation to generation, whether sequentially or not; exist in a codified, oral or other form and can be dynamic and developing and take the form of know-how, skills, innovations, practices, exercises or training. As for items a, b and c, their content can be reduced to the definition of traditional cultural expressions used by the World Intellectual Property Organization: these are any forms of artistic and literary, creative and other spiritual expressions, tangible and / or intangible, or their combination such as actions, materials, music and sound, verbal and written expressions and their adaptation, which may exist in written/ codified, oral or other forms.

### **4. Conclusion**

It is obvious that the concept of intangible cultural heritage, as used in the 2003 Convention, is quite broad and includes elements that can be demarcated and, subject to certain conditions, are classified either as traditional knowledge or as traditional cultural expressions. The definitions developed by both the World Intellectual Property Organization and UNESCO contain some matching criteria regarding traditional knowledge, such as links to cultural heritage and transmission from generation to generation, but there are discrepancies among other criteria that does not allow us to say that the range of objects subject to protection is the same from the point of view of the UNESCO and World Intellectual Property Organization. Thus, in the development of international tools for the protection of traditional knowledge and traditional cultural expressions, UNESCO follows a comprehensive approach and it is aimed primarily at preserving these objects

and ensuring their viability, unlike the World Intellectual Property Organization, which focuses on preventing and warning on their illegal use.

## **5. Acknowledgments**

The work is performed according to the Russian Government Program of Competitive Growth of Kazan Federal University.

## **References**

AIKAWA, N. 1999. **The UNESCO Recommendation on the Safeguarding of Traditional Culture and Folklore (1989): Actions Undertaken by UNESCO for Its Implementation.** Paper presented at the conference A Global Assessment of the 1989 Recommendation on the Safeguarding of Traditional Culture and Folklore: Local Empowerment and International Cooperation, Washington, pp. 14-15. USA.

AIKAWAFAURE, N. 2009. **From the Proclamation of Masterpieces to the Convention for the Safeguarding of Intangible Cultural Heritage.** In *Intangible Heritage*. Abingdon: Routledge. p. 23. UK.

AKAGAWA, N. 2016. **Intangible Heritage and Embodiment: Japan's Influence on Global Heritage Discourse.** In *A Companion to Heritage Studies*, John Wiley & Sons, p. 71. USA.

IGC, A. 2004. **The Protection of Traditional Cultural Expressions: Draft Articles (WIPO/GRTKF/IC/28/6).** Annex. p. 5. UK.

IGC, A. 2016. **The Protection of Traditional Knowledge: Draft Articles.** (WIPO/GRTKF/IC/32/4) October 3, 2016. Annex. p. 6. UK.

LIXINSKI, L. 2013. **Intangible Cultural Heritage in International Law.** Oxford, United Kingdom: Oxford University Press, p. 31. UK.

MCCANN, A. 2001. **The 1989 Recommendation Ten Years On: Towards a Critical Analysis.** In *Safeguarding Traditional Cultures: A Global Assessment*, Seitel P. Smithsonian Center for Folklife and Cultural Heritage and UNESCO. p. 60. USA.

SHERKIN, S. 2001. **A historical study on the preparation of the 1989 Recommendation on the Safeguarding of Traditional Culture and Folklore.** In *Safeguarding Traditional Cultures: A Global Assessment*, UNESCO. p. 44. France.