Expert meeting in the framework of the global reflection on the listing mechanisms of the 2003 Convention

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A Historical Overview – the 2003 Convention and its listing mechanisms – Issues

I. Introduction

1. In the background paper I prepared for this meeting, I described the processes that led to the adoption of the text of the 2003 Convention, and of the first set of Operational Directives in 2008. It is an overview of meetings held, decisions made, and problems left for later, not a story with recommendations.

2. In October 2003, States had very different ideas about, and intentions with, the listing system of the Convention. Some of the drafters of the Convention were inspired by the World Heritage Convention, while others were almost repelled by it. Different views of the Masterpieces Programme, ushering in the Convention, have continued till this day.

3. Looking back, one can be surprised how little we have heard the voices of practitioners and tradition bearers in our meeting rooms over the years. I also realize it could not easily have been otherwise. Paris is neither Geneva, nor New York. In spite of the good efforts of delegations of – in particular – Latin American countries that in the early days advocated the interests of communities in – what I would almost like to call – the spirit of the Convention.

4. From me you are not going to hear that the Convention is dead, or seriously ill, or that it lost its credibility. For very many practitioners and tradition bearers, the Convention is not dead at all, but has brought visibility and respect to their practices and traditions. Living heritage has become a widely recognized concept. We have a Convention that Mr. Matsuura and Noriko Aikawa – and with them many others – can be proud of. As to the term – credibility – I hope we can use it sparingly. Too often one can hear it when arguments do not suffice, when reasonings fail to convince. But, what is credible, and for whom? My "credible" may not be yours.

5. The Convention has undergone regular maintenance through the development and changing of the Operational Directives. The three listing

mechanisms have been tested over the years; their regulations changing, whether because of new insights, or forced by circumstances. In some quarters, pressure has been growing for a thorough revision of inscription mechanisms. These quarters include the writers and backers of the IOS Report back in 2013, the Evaluation Body, as well as members of the Committee and the General Assembly.

6. In my presentation today I will highlight a few issues that were recurrent in the Secretariat's report of the Online Review[1] and in Eva's paper[2], and that may play a role in our debates. Where possible I will present them with background information from the drafting history of the Convention and of the Operational Directives.

II. Community participation

The first point I would like to raise concerns Community participation.

7. The review of the Online Survey informs us that: "Many experts lamented what they characterize as the top-down approach of the current listing system", which – they say - does not reflect "community aspirations and needs."

8. Similarly, Eva's paper suggests that:
- the role of experts and governments significantly overshadows the voice of communities;
- the relationship between communities and UNESCO is indirect and inflexible;
- communities are practically excluded from certain decision-making processes.

9. Various suggestions for solutions are mentioned in Eva's paper, including:
- making the listing mechanisms accessible to communities;
- allowing communities to directly report to the governing organs of the Convention.

10. In the Convention, there are no stipulations about the involvement of communities in its implementation at the international level, for instance during Committee or Assembly sessions, or in examination procedures. However, their presence or participation is not excluded. The Committee, according to article 8.4 of the Convention, may invite to participate in its meetings "private persons

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[1] Document LHE/21/EXP/5
[2] Document LHE/21/EXP/4

with recognized competence in the field of intangible cultural heritage" to consult them on specific matters. The Operational Directives' paragraph 89 explicitly identifies "communities, groups and other experts" as belonging to the "private persons" mentioned in article 8.4 of the Convention. To my knowledge such invitations have not yet been extended.

11. Both in the Convention and in the Operational Directives, one does find several instructions for the States Parties to involve communities, groups and individuals on the national level when their heritage is at stake. Of these, only the indication to involve communities in the preparation of nomination files, and in particular in the drafting of safeguarding plans and measures, is enforceable – at least on paper.

12. During the drafting period of the Convention, States from Latin America, the Pacific and one NGO have asked for attention for community involvement, whereby indigenous peoples and local communities were often explicitly mentioned. The result of these efforts is that "indigenous communities" are mentioned – in passing – in the Preamble of the Convention. Just that.

13. A number of Latin American States Parties around 2007, notably at 1.COM, proposed to create a standing council, or committee, of community representatives that could advise the Committee. Their proposals did not meet with wide support. At that same session, the Committee did not want to be informed about how community representation was organized in meetings of the WIPO Intergovernmental Committee[3] that we should feel close to.

14. The World Heritage Committee established in 2017 an *International Indigenous Peoples Forum for World Heritage*, which was launched the year after. The organs of our Convention have not yet been inspired by this precedent. I am curious what form our meeting will give to the calls for more and better involvement of communities, groups and individuals, in particular on the international level.

III. Equitable geographical representation

The second point I would like to discuss is equitable geographical representation, both in relation to the Lists and the Register.

15. The drafters of the Convention and the Operational Directives were clear advocates of this principle. The Convention, for instance, insists on equitable

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3   WIPO has an Indigenous Peoples and Local Communities Portal (https://www.wipo.int/tk/en/indigenous/) and community organisations have a well-regulated and wide access to the meetings of the WIPO committee in question, the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.

geographical representation among the States Members of the Committee (Article 6.1) and paragraph 93 of the Operational Directives' wants such representation to be observed when the Committee recommends NGOs for accreditation. The Committee must also be guided by this principle when examining requests for International Assistance (Operational Directives' paragraph 10). The principle has clearly not been observed with the accreditation of NGOs, since Group I alone covers over 50% of the accreditations, with Groups Vb, III and II showing low scores. [4]

16. By means of paragraph 34 of the Operational Directive's, the Organs of the Convention try to mitigate the unequal and also unequitable representation of States Parties on the Lists of the Convention, a problem which had rapidly developed back in 2009/2010. That Directive assigns priority to files coming from States without inscriptions, or with relatively low numbers of inscriptions, in case in a given cycle not all submitted files can be treated. The effect is that that rather unequal representation is diminishing slowly.

17. There remains, however, a growing unequal distribution of inscriptions for the different electoral groups over our three inscription mechanisms. First the figures:

- Groups I, II and III (that is Europe and the America's) have the highest numbers of Good Practices inscribed (together 92% of in total 25 inscriptions), whereas Groups Va and Vb have none; the same groups I, II and III are poorly represented on the Urgent Safeguarding List (together 31%). The case of Electoral Group I is striking: it has 44% of the Register inscriptions, less than 6% of the Urgent Safeguarding List inscriptions and, as we just mentioned, over 50% of accredited NGOs.
- These unequitable and embarrassing distributions of accredited NGOs, and of the numbers of inscriptions for our six Groups over the different mechanisms, cannot but leave the impression that Group I, and to a lesser extent Group II and Group III have the best safeguarding experiences, most expertise and the least need of safeguarding their ICH. This is not true, so the impression is rather unfair. These disproportionate distributions should be taken into account when discussing the relative under-use of the Urgent Safeguarding List and the Register, and the underlying reasons.

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[4]   Note that fifteen of the accredited NGOs are based in the non-States Parties Canada (9), UK (4), USA (4) (all Group I) and Australia (1) (Group IV), which significantly raises the share of Group I

IV Towards a more dynamic, lighter system with communicating, inclusive an open-ended mechanisms?

18. The Lists and the Register-to-be are introduced in Chapter IV of the Convention, each in its own right.[5] The text of the Convention gives no indications about relations between the three mechanisms. The drafters of the Convention had decided that the Urgent Safeguarding List would not be a sub-list of the Representative List, which significantly diverged from the World Heritage system. In the same vein, no obligatory link was indicated in Chapter IV between the inventories that the States Parties have to draw up and listing on the international level, shifting away from the model of the Tentative List under the World Heritage system. The Committee thus had a very free hand when it had to regulate the listing mechanisms in 2006 and 2007.

19. The first set of Operational Directives, in 2008, also presented the three mechanisms as independent from each other, though – as far as the two Lists are concerned – depending on the inventories that States Parties prepare at the national level. Till 2.COM, some Committee Members had advocated the option of simultaneous inscription of an element on both Lists, but eventually Article 14 of the first set of Operational Directives stated that simultaneous inscription would not be allowed. It already indicated that transfer from one List to the other would be possible, on certain conditions. The same information nowadays can be found in the Operational Directives' paragraph 38.

20. Initially, both Lists, and the Register in principle were open-ended, and that was what the Committee had been fighting for at 2.COM, in Tokyo in 2007. For the Urgent Safeguarding List a more substantive examination procedure was set up than for the Representative List and the Register. For the Urgent Safeguarding List, preparatory evaluation was outsourced to NGOs and experts. For the Representative List, a subsidiary body of the Committee was entrusted with that task (with a lighter mandate), and a working group of the Committee for the Register.

21. After large numbers of nomination files had initially been sent in by the States Parties in 2009 and 2010, in particular for the Representative List, the Committee introduced a ceiling for the number of files that could be treated in the course of one cycle. The ceiling concerned the two Lists, the Register and part of the requests for financial assistance. [6] That decision had in the first place to do with limited capacities of the Secretariat to process and of the Committee to examine nominations and requests. An effect of the introduction of the ceiling was that from 2010 on in practice only one file can be treated per State Party per cycle

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5   Although the Register needed to be elaborated by means of the Operational Directives (see paragraphs 3-7 and 42-46).

6   See Committee's Decision 6.COM 15 (2011) and General Assembly Resolution 4.GA 5 (2012).

for the two Lists, the Register and the Fund taken together (see paragraphs 33 and 34 of the actual Operational Directives).

2. The *IOS Report* concluded already in 2013 that the introduction of a limit to the number of files that States Parties could submit had put the three mechanisms in competition.[7] It also claimed that the new situation, which had been consolidated in the Operational Directives in 2012, has "further discouraged the nomination of elements to the Urgent Safeguarding List", and to the Register (paragraph 223). As I described in my background paper, the examination procedures for the three mechanisms became aligned, with procedures generally becoming heavier, forms more complicated and reporting obligations becoming more arduous.

21. I was happy to see in Eva's paper and in the Secretariat's report about the Online Survey several ideas that suggest ways for moving towards a more dynamic and open-ended system, without competition. This might mean a lighter burden for the Secretariat and it might allow the Committee to spend more time during its sessions on fundamental questions than is now the case.

These ideas, some of which had already been floating around between 2003 and 2008, include:

- easier interaction, including transfer, between the three mechanisms;
- lighter procedures;
- structural involvement of community and group representatives to execute specific tasks;
- allowing communities to play a primary role in the monitoring of an element post-inscription and in the transfer and removal of elements
- outsourcing of certain tasks to NGOs; and
- expert assistance for organisations and communities that want to prepare files for the Urgent Safeguarding List and the Register.

Thank you for your attention.

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[7] *IOS Report*, paragraphs. 200 and 223 (https://ich.unesco.org/doc/src/IOS-EVS-Pl-129_REV.-EN.pdf)